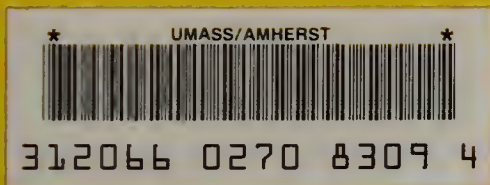


MASS. EA 20.2: Ap 58



**APPLICATION FOR
FINANCIAL ASSISTANCE
WATER POLLUTION ABATEMENT FACILITIES
CONSTRUCTION STAGE
SEPTEMBER, 1990**



**MASSACHUSETTS WATER POLLUTION
ABATEMENT TRUST**

*Office of the Treasurer
and Receiver-General*

Executive Office for Administration and Finance

*Department of
Environmental Protection*

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INTRODUCTION

Chapter 275 of the Acts of 1989 (the "Act") established the state revolving fund program in Massachusetts contemplated by Title VI of the Clean Water Act (the "CWA") and created the Massachusetts Water Pollution Abatement Trust (the "Trust") to implement the program. The Trust is authorized under the Act to make loans to local governmental units to finance the costs of eligible water pollution abatement projects. In order to receive a loan, a potential borrower must file an Application for Financial Assistance with the Department of Environmental Protection (DEP), Bureau of Municipal Facilities ("BMF"). Once DEP has approved the Application, it will forward a Project Approval Certificate to the Trust. The Trust will then be authorized to fund the loan, subject to the availability of funds and subject to review by DEP and the Trust of financial information contained in the Application and development of terms and conditions for the loan.

Eligible projects will be determined in accordance with the priority lists established annually by DEP. Applications for loans will be reviewed in accordance with the provisions of 310 CMR 41.00 (Appendix A) and regulations to be promulgated by the Trust pursuant to the Act.

This package includes the Application Forms, Instructions and other information relative to supporting documentation required to be submitted as part of the Application. Do not submit the instructions with the application.

Applicants should note that neither the filing of an Application nor issuance by DEP of a Project Approval Certificate will constitute a binding commitment of the Trust or DEP to make a loan. Binding commitments, subject to the availability of funds, will be issued by the Trust after review of the financial information contained in the Application.

PLEASE NOTE THAT THIS APPLICATION PACKAGE IS SUBJECT TO REVISION. IT DOES, HOWEVER, REFLECT THE BEST CURRENT INFORMATION ANTICIPATED TO BE NEEDED BY THE DEPARTMENT AND THE TRUST TO REVIEW AND APPROVE YOUR PROJECT. PLEASE CONTACT THIS DEPARTMENT, BUREAU OF MUNICIPAL FACILITIES, PRIOR TO SUBMISSION OF THIS APPLICATION.

APPLICATION FOR
MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST
FINANCIAL ASSISTANCE PROGRAM

GENERAL INFORMATION

PLEASE COMPLETE ALL PARTS OF THIS APPLICATION. INCOMPLETE OR INCORRECT APPLICATIONS MAY DELAY REVIEW OF THE APPLICATION.

1. Use of This Application - This is an application form for financial assistance from the Massachusetts Water Pollution Abatement Trust's State Revolving Fund (SRF) Program. The SRF Program is a financing assistance program for the planning, engineering design, and construction of wastewater pollution abatement facilities. This form is to request loan assistance and/or to request refinancing of debt obligations incurred by the local governmental unit. Local governmental units interested in receiving a SRF loan must complete and return this application.
2. Submission - Please submit the original application (with original signatures) and one complete copy to:

Paul Taurasi
Assistant Commissioner
Massachusetts Department of Environmental Protection
Bureau of Municipal Facilities
One Winter Street, 6th Floor
Boston, Massachusetts 02108
(617) 292-5793
3. General Eligibility - A project must meet the eligibility criteria of the SRF program in order to be eligible for financial assistance under the SRF Program.
(See 310 CMR 41.00 Appendix A)
4. The Application Consists of Four Parts:

Part I General Information requested of each applicant(s). Also, the application certification statement is included.

Part II Financial section information required for state bonding. This information will be also used to determine the applicant's ability to repay the loan.

Part III Project Section - Project specific data with Supporting documentation.

Part IV Instructions for Supplemental Requirements.

5. Please refer to the application instructions to determine which types of additional information are required and submit them with this application. You may need to submit supporting information or documentation information in addition to that requested in this application.

PART I

APPLICANT INFORMATION INSTRUCTIONS

- 1-6. Provide the legal name of applicant, or municipality, which will undertake the proposed project. List name, title, complete address, and telephone number of authorized representative. If the applicant is not a municipality provide information regarding the entity which will be responsible for executing contracts and documents.

Authorized Representative - The application must contain a resolution designating by title the official (Mayor, City or Town Manager, Chairman of the Board of Sewer Commissioners, Board of Selectmen, etc.) to act as the representative of the applicant to sign for, accept, and take whatever action is necessary relative to the project. Sample forms for the Authority to File are enclosed (Appendix B). In the city form of government, the City Council will generally name the authorized representative. If the community is governed by Town Meeting, then the Town Meeting action will name the appropriate group, such as the Board of Selectmen or Board of Public Works. The appropriate governing body will then name the authorized representative. If the authority to file statement names an office, then a certified statement is required specifically identifying the individual currently holding that office.

The Authority to File statement must be certified. This is accomplished by either a certification at the bottom of the authority to file or by submitting a separate certifying statement. Suggested forms for Authority to File and Certifying Authority to File are included in Appendix B.

In the event the authorized official is replaced while the project is still active, a certified statement naming the new incumbent and the effective date of appointment must be submitted.

- 7A. List the applicant's Department of Revenue (DOR) identification Number (this is the I.D. number used on all state revenue aid programs).

- 7B. List the applicants Bureau of Municipal Facilities I.D. Number.
- 8A. Indicate the amount of assistance you are requesting for planning, design, or construction.
- 8B. LOCAL APPROPRIATION - The applicant must demonstrate that sufficient funds are available to cover the project costs. This is accomplished by means of Town Meeting, City Council, Water Pollution Abatement District, or other appropriate action. Forms are included in Appendix C which provide suggested language depending on whether the applicant uses general obligation or revenue obligation borrowing. Local bond counsel should be consulted for exact language. Important points to remember include:
- a. Note that the applicant can borrow from the Massachusetts Water Pollution Abatement Trust in accordance with Chapter 29c of the General Laws.
 - b. The resolution must be certified.
 - c. It must denote who can act on behalf of the applicant to file for and accept financing.
 - d. It must specifically state what project or type of project is included, such as treatment plant, pump station, sewers, etc.
- 8C. Give a brief description of the planned project including but not limited to the following, as applicable:
- a. Size and type of wastewater treatment plant
 - b. Size of pumping station(s).
 - c. Size and length of sanitary sewer and force main.
 - d. Is the project part of a phased project?
 - e. Is the project required by enforcement action?
9. If the project is serving more than one municipality, list all municipalities involved. Also, list NPDES permit number(s) received from the Department of Environmental Protection for each municipality.
- 10-13. Consulting Engineer Firm information: Provide the name, contact person, telephone number, and address (include zip code) of the consulting engineer(s).
14. Check ALL forms of financial assistance the applicant is requesting.
15. The application certification is to be signed by the authorized representative designated in item 2.

PART II

FINANCIAL SECTION INSTRUCTIONS

INTRODUCTION

One reliable source for determining if a local governmental unit can repay its loan is with this credit questionnaire, asking information that will be needed if your entity is using a revenue or general obligation pledge.

Applicants are asked to provide data in the sections set forth below. Applicants may attach documentation to supplement the responses and provide in this application a specific cross-reference to the appropriate page within such documentation.

An applicant which is not a city or town may, in lieu of responding to inapplicable portions of this application, provide the following: (1) the applicant's audited financial statements for the three most recent fiscal years; (2) a copy of the applicant's most recent official statement or disclosure document; and (3) the applicant's most recent annual report.

The SRF Program requires an applicant to certify that it possesses the ability to repay the financial assistance and that the certification be supported by documentation of the applicant's financial capability. Our evaluation of your ability to repay an SRF loan uses the information in the following questionnaire. Please complete this form to the best of your ability and include applicable documentation. If some or all the data/documents are not available at this time, please indicate which information is unavailable and when it will be provided.

The Department, along with the Trust, will evaluate a municipality's ability to repay its loan based on generally accepted financial indicators. Each recipient that receives a loan will need to pledge as a means of repaying its loan either general revenues (ie: a general obligation) or user or charges (ie: a revenue obligation).

- 1-3. PLEDGE INFORMATION - Indicate the type of pledge or pledges you intend to use as a means of securing an SRF Loan. If you have a rating for the pledge(s) you intend to use to secure an SRF loan, indicate the rating, source, date acquired, outstanding debt, and original debt obligation.

4A-D.

REFERENCE INFORMATION - Provide the name, complete address, phone number (include area code) of your town counsel, city solicitor or general counsel. If you intend to engage or have already retained bond counsel, provide the name of the bond counsel firm, its complete address, and the name of an appropriate contact person and telephone number. Provide the firm name, complete address, contact person, and telephone number of your financial advisory firm, engineering consulting firm, and the accounting firm that performed your last financial audit.

5.

CHECKLIST OF DOCUMENTS TO BE SUBMITTED - Submit, where applicable, the documents listed. Your financial advisor, accountant, and/or attorney may be able to assist you in providing these documents.

6.

GENERAL INFORMATION

- A. Indicate your population for 1970, 1980, and current population estimate and year. Also give your future population estimate and year. Use the twenty (20) year projection from the facilities plan.
- B. If you are pledging general obligation bonds, prepare and submit a table of overlapping or underlying debt for your jurisdiction.
- C. Provide information on how the project for which you are requesting SRF assistance is to be funded. Indicate your total project cost (including portions not eligible for a loan), the amount requested for this loan and the funds on hand. Also, indicate any grant funds and their source. Indicate with an asterisk (*) next to the total project cost if this amount is the contract amount. If the cost includes construction period capitalized interest costs, indicate the capitalized interest amount in the space provided. Also describe briefly the tentative construction schedule for the project.
- D. Indicate your legal debt capacity.
- E. List your five largest property taxpayers. Provide the tax year, taxpayer name, the equalized valuation, and the type of business or property description.

- F. Indicate your total equalized assessed valuation for the last five years. For any year which indicates a large increase or decrease (plus or minus 8 percent), provide a brief description on why this large change (increase or decrease) occurred. Note with an asterisk (*) any year that a revaluation occurred.
- G. Provide information regarding your last 3 years levies and collection trend. Indicate the year, the amount levied, and the amount collected that year.
- H. Indicate any general obligation and revenue obligation bonds that have been authorized, but unissued. Provide the amount and term of the authorization, the bonds' anticipated purpose, and the schedule for issuance.
- I. Provide information regarding future borrowing plans. Indicate the year, the anticipated amount, and purpose.

7. FINANCIAL PROFILE - Provide your financial audits or financial statements for the last 3 years with letters of recommendation. Indicate the year and if the audit/statement has been completed or not. The financial audit or statement should be for the entire area, not just the wastewater utility. If the most recent year's audit is not available, an unsigned draft or other preliminary report with all letters of recommendation is acceptable until the full audit is available.

8. ECONOMIC PROFILE

- A. List the ten largest employers in the community which have a significant impact on your municipality. Include the employer name, number of employees, and the employer's type of business.
- B. Provide a description of the project service area. Indicate the location of the project (county and municipalities to be served by the project) and the population of the total service area if different from the municipality's population as indicated in 6.A.

SYSTEM PROFILE

- A. Indicate your total planned treatment capacity in million gallons per day (mgd). If your municipality is currently unsewered and is building its own treatment facility, indicate your proposed facility's total planned treatment capacity.

If your municipality is unsewered, skip B and C. Proceed to D.

- B. Indicate if your municipality's system is under court order to meet specific state or federal standards by a certain date. If your answer is "yes" indicate the reasons why.
- C. Provide the average and peak daily flows of your treatment facility for the last five years. Please state your answer in mgd (million gallons per day).
- D. List the largest users of your treatment facility. If currently unsewered, list the largest projected users. Include those users that contribute or will contribute more than 2 percent of system revenues. Revenues can include user charges or property tax contributions. Property tax contributions greater than 2 percent must relate directly to the sewerage system. List each customer name, the percentage of contribution in total system revenues, and the type of business. Also indicate if there are any special contractual arrangements or proposed arrangements regarding major industrial users of the sewer system with more than 5 percent contribution in revenues. If yes, indicate the industry's name and give a brief description of the contractual agreement.
- E. Describe your wastewater treatment system's current rate structures. If unsewered, describe the proposed rate structures. Include frequency of payments, i.e., monthly, quarterly, or annually, and the rate change process.

For sewerred municipalities, indicate your wastewater revenue history for the last 12 months by providing the month, year, amount billed, and the amount that has been 30 days or more delinquent. If your municipality bills on a

quarterly or annual basis, only indicate the month(s) you bill the customers. The 3 previous years' figures (12 month total for each year) also need to be provided. Any other pertinent information regarding your payment structure should be included.

If currently unsewered, skip questions F and G. Proceed to H.

- F. On a separate attachment, provide the last 10 years of user rate change history for all types of rates and charges. Include in the history each date (month/year), the increase (or decrease) occurred, all classes of users, (i.e., residential, commercial, industrial, etc.), and the corresponding changes in their user charges. Also, indicate if any other change in rate charges

occurred in the following areas: hookup fees, special assessments, customer base, property taxes, etc.

- G. Indicate if any rate increases that are being proposed to fund the project. If "yes," describe the effect these increases will have on the current monthly charges to typical residential customers, i.e., the rates will increase from \$_____ to \$_____. Indicate the portion of the increase that is for operation and maintenance and the portion which is for capital costs. Also specify if these rate increases will be enacted prior to the issuance of SRF loan award. If "no," indicate when you expect a rate increase.

- H. Indicate the projected increase in the annual revenues over the next five years. Provide the current annual revenues and the proposed annual revenues. Indicate the source(s) of increased revenues in the following areas: property taxes, customer base, user charge rates, hookup fees, impact fees, and others (i.e., special assessments, etc.). Indicate your source for the information provided.

- I. Indicate the amount annual operating and maintenance costs are projected to increase as a result of the project. Provide the current amount of operation and maintenance expenses and the proposed amount. Indicate your source for the information provided.

- J. Indicate the amount annual debt service costs are expected to increase over the next 20 years as a result of the project. Use an interest rate of 8 percent. Provide a table which indicates the existing current annual debt service costs on your facility, the projected annual debt service costs on the loan for which you are applying, and the total annual increase in debt service costs. For unsewered communities with no prior debt, indicate the projected annual debt service costs for this loan. Indicate your source for the information provided

10.

CAPITAL IMPROVEMENTS PROFILE

- A. Indicate if you anticipate any future wastewater system needs other than the proposed project in order to stay in compliance with current and upcoming state and federal regulations or to maintain the system (compliance maintenance). Limit your response to a 2 year projection.
- B. Indicate how you plan to fund wastewater system improvements or additions in the future. These can include reserve accounts, bond issues etc. If you intend to borrow funds for these future improvements or additions, indicate the year you propose to borrow the funds, the estimated amount, and purpose.

11.

LEGAL

- A. Indicate if there is any litigation or threatened litigation, or other factors known which may substantially affect the operation of the governmental unit in the future. If "yes," provide background information regarding the litigation factors and the current status.
- B. Indicate if there are any unfunded retirement or pension liabilities. If "yes," provide the amount of liability for each. Indicate if this information is contained in your audited financials.

PART III
PROJECT SECTION INSTRUCTIONS

1. PLANS & SPECIFICATIONS - Two copies of the final engineering plans and specifications for each contract should be submitted as soon as possible but no later than with the application. The comments of all other interested parties, such as DEP regional offices, are to be incorporated into the documents. Upon approval, one complete set of stamped documents will be retained by BMF and another will be forwarded to the applicant. Applicants are encouraged to submit the final plans and specifications as early as possible.
2. DETAILED PROJECT SCHEDULE - The application must contain a realistic schedule outlining important milestones in the construction program, including bidding requirements. Since the Trust will sell its bonds based on the proposed schedules, it is critical that this schedule be as accurate as possible.
- 3C. DETAILED CONSTRUCTION BID SHEETS - Completed bid tabulations from the specifications showing the engineer's estimate of construction cost, including eligibility, shall be included.

**PART IV
SUPPLEMENTAL REQUIREMENTS WITH INSTRUCTIONS**

1. LAND TITLE/EASEMENTS - The applicant must demonstrate that all required land, easements, or real property have been obtained, bonafide options taken, or condemnation proceedings initiated. The municipal attorney will prepare a document certifying the ownership or easement rights to all property. A sample form is included in Appendix D.
2. INTERMUNICIPAL AGREEMENTS - If the project will serve two or more municipalities, or one municipality's project must connect to another's sewerage system, the applicant must submit an executed intermunicipal agreement or another legally binding document covering financing, construction, and operation of the proposed treatment works. The requirement may be waived if:
 - a. Evidence of historic relationships for other services between the parties exist; or
 - b. The financial strength of the applicant is adequate to continue the project, even if one of the proposed communities fails to participate.
3. INTERDEPENDENT PROJECTS - The application should note whether financing is also being requested for a separate portion of the project from another DEP program. The application should specify related projects. For example, the applicant must show the interdependence of a collection system project connecting into a major interceptor - Tier I, Title VI or Tier II project.
4. PROTECTION OF WATER SUPPLIES - The project must be consistent with the enclosed DEP policy (Appendix E) for the protection of water supplies in proximity to wastewater treatment facilities.
5. USER CHARGE SYSTEM - Prior to the award of financial assistance for construction (Step 3), the applicant's user charge system must be approved by DEP. If such a system is already in effect, then it must be shown that the system is adequate and is being enforced. In addition, the system must be placed in effect by the applicant within 90 days of signing a loan agreement. For further information, please refer to 310 CMR 41.17.

6. SEWER USE ORDINANCE - Prior to the award of financial assistance for construction (Step 3), the sewer use ordinance must be approved by DEP. If such an ordinance is already in effect, it must be shown that it is adequate and being enforced. If the ordinance is not in place it must be put into effect by the applicant before the treatment works is placed in operation. Note that this document must be consistent with the Massachusetts model ordinance.
7. CONSTRUCTION PERMITS - If applicable, the following construction permits must be filed and documented in the loan application. For the purposes of awarding financial assistance, the application for the permit(s) is acceptable, however the final permit(s) must be incorporated into the specifications prior to BMF authorization to advertise:
 - a. U.S. ARMY CORPS OF ENGINEERS - An Army Corps of Engineers Section 404 Permit is required if a structure is to be located in, or if excavation, discharge of dredged or fill material will be performed in waters of the United States. For water pollution abatement projects, this may involve the excavation and backfilling associated with sewer lines crossing a waterway or wetland, outfall pipes, and any fill material (including rip-rap) used for bank stabilization or any fill associated with treatment facilities.
 - b. MA DIVISION OF WATERWAYS - A Chapter 91 Permit must be obtained for the construction of any structure, such as an outfall pipe or siphon, or the filling of land, the driving of piles, or the making of excavations, in, over, or upon the waters below the high water mark of any tidal areas or in or over any great pond or any river or stream. In addition, a permit is also required if it is proposed to either dredge in the tidal areas or dispose of any dredged material therein. For further guidance on this issue, please refer to 310 CMR 9.00.
 - c. LOCAL CONSERVATION COMMISSION - Under Chapter 131, Section 40, the applicant must file a notice of intent with the local conservation commission if construction is to occur within 100 feet of wetlands or floodplains. Note that both natural and man-made coastal dunes are included within the definition of wetlands.
 - d. DEP DIVISION OF AIR QUALITY - Any proposed new or modified source of air contaminants, such as carbon monoxide, hydrocarbons, nitrogen oxides, sulfur dioxide, particulate matter, volatile organic compounds, and any pollutant covered by the National

Emission Standards for Hazardous Air Pollutants promulgated by EPA, must be approved. For further guidance on this issue, please contact the Division of Air Quality Control and refer to 310 CMR 7.00.

- e. DPW HIGHWAY PERMIT - A permit must be obtained from the regional DPW office for any project which crosses or does any type of work within the boundaries of a state highway.
 - f. DWPC SEWER EXTENSION PERMIT - A sewer extension permit is required whenever an extension or connection to the system is proposed. An application must be filed with DWPC. For further guidance on this issue, please refer to 314 CMR 7.00.
 - g. MBTA/CONRAIL LICENSE - A license is required if the project will impact property owned by either the MBTA or CONRAIL. The appropriate agency should be contacted for further information.
 - h. DWPC WATER QUALITY CERTIFICATE - Any project requiring a federal or state license or permit to conduct activities which may result in a discharge to waters of the United States must be evaluated for compliance with applicable effluent limitations and water quality standards, during the construction and subsequent operation of the proposed facility. State certification must be obtained before a license or permit may be issued. Such activities include NPDES regulated discharges, dredge and fill operations, and the construction of structures in water. For further guidance on this issue, please refer to 314 CMR 9.00.
 - i. OTHER STATE/FEDERAL PERMITS - Depending upon the project, other permits may be required and must be filed for.
8. CZM CONSISTENCY CERTIFICATE - The issuance of federal permits for activities located within the coastal zone or affecting this zone requires that the applicant obtain a certification that the activities are consistent with the state coastal zone policy. For further guidance on this issue, contact the Office of Coastal Zone Management.
9. MEPA COMPLIANCE - Prior to the award of financial assistance, an Environmental Notification Form (ENF) must be filed with the MEPA Unit of EOEa if the project exceeds the review thresholds contained in 310 CMR 11.00. After a review period, the Secretary of EOEa will decide whether an Environmental Impact Report (EIR) is required or not. If not, then the project can proceed, subject to any conditions

that MEPA may place on the project. If an EIR is required, it must be completed by the proponent and submitted to the Secretary for an additional public comment period. Once the comment period has expired, the Secretary will render a decision on the final EIR. If it is found acceptable, and once the 60-day legal challenge period expires, the project can then proceed. The application must contain documentation that the requirements of MEPA have been satisfied.

10. FLOOD INSURANCE PARTICIPATION - If the project involves structures within a flood hazard area, the applicant must furnish evidence that it is either participating in the flood insurance program or a letter of intent that it will obtain the required insurance both during construction and for the useful life of the project.

Insurable structures are defined as being \$10,000 or more in value, and are new or reconstructed surface structures which are walled and roofed, such as a pump station or treatment plant control building. Facilities such as sewers, which are not likely to be damaged by flooding, are not eligible for insurance.

11. HISTORIC PRESERVATION - A construction loan cannot be made until all work required by the Massachusetts Historical Commission (MHC) has been completed and approved by them in accordance with 950 CMR 71.00. The loan may be conditioned, in some instances, to require recovery of archaeological material during construction when a sensitive area will be affected and no reasonable alternative is available. Documentation that the requirements of MHC have been met must be included with the application.

12. CHAPTER 233 - STATEMENT ON MA TAXES - A statement must be signed by the consultant engineer(s) for the project that states that the engineer(s) is in compliance with Massachusetts tax laws. A sample statement is provided in Appendix F.

13. LEGISLATION IF NEEDED - There are several instances where special legislation from the Massachusetts General Court could be required prior to the initiation of construction. Examples include:

- a. Construction in dedicated conservation land, including park land;
- b. Construction by one community within the municipal boundaries of another;
- c. Formation of a special pollution abatement district.
- d. Easements for construction in state owned land.

If there are any questions, the applicant should discuss them with DEP legal counsel.

14. WATER RESOURCES/LAND USE CERTIFICATIONS - Prior to receiving financial assistance for a construction project, an applicant must demonstrate that the project is consistent with existing state, regional, and local water resource and wastewater planning requirements including but not limited to:
- a. River basin water quality management plans pursuant to the Clean Water Act s.303(e).
 - b. Non-point source management plans pursuant to the Clean Water Act s.319.
 - c. Estuaries management plans pursuant to the Clean Water Act s.320.
 - d. Local water resource management plans pursuant to the regulations of the Water Resources Commission.
 - e. Water emergency planning pursuant to M.G.L. c.21G.
 - f. The applicant shall certify that land use regulations, zoning, and other controls in place are consistent with the wastewater system service population projected in the applicant's facilities plan. Said certification shall list or otherwise identify the controls in place upon which it is based.

Sample forms are included in Appendix G.

15. ENGINEERING AGREEMENT - The application must contain a draft engineering agreement which clearly outlines the duties and responsibilities of the applicant and the consultant engineer. The agreement will include, but not be limited to:
- a. Scope of work for the various tasks, including basic, resident, and special construction services.
 - b. Cost to perform the work to be paid in accordance with the provisions of 310 CMR 41.62.
 - c. Provisional overhead rate.
 - d. Time of Completion.
 - e. Model subagreement clauses (310 CMR 41.64).
16. MODEL SUBAGREEMENT CLAUSES (Not Applicable to Collection System Projects) - The provisions of 310 CMR 41.64 are to be made a part of all engineering agreements.
17. BMF 90-01 COST/PRICE SUMMARY (Not Applicable to Collection System Projects) - The request for financial assistance for engineering services in excess of \$10,000 shall include a breakdown of cost and price considerations in the approved format. The following items will be included:

- a. Direct salary costs by job category.
- b. Provisional overhead rate.
- c. Other direct costs (travel, expenses, subcontracts, etc.)
- d. Profit.

The form (Appendix H) must be signed by two parties; first by the consultant engineer and then by the applicant.

- 18. DETAILED ENGINEERING FEE BREAKDOWN (Not Applicable to Collection System Projects) - All engineering fees shall be broken out by task (shop drawings, resident services, start-up, etc.), job category (vice president, project engineer, draftsman, etc.), and cost.
- 19. SUBCONTRACTS WHERE APPLICABLE (Not Applicable to Collection System Projects) - All lower tier subcontracts in excess of \$10,000 must be submitted in draft form with the application, including an executed BMF 90-01 form.
- 20. MINORITY/WOMEN BUSINESS ENTERPRISE (Not applicable to Collection System Projects) - Applicants receiving assistance must make positive efforts to use minority and women owned businesses for engineering services. Such efforts should achieve a goal of 11% participation for minority business (MBE) and 5% participation for women owned business (WBE) but at a minimum should allow these sources the maximum feasible opportunity to compete for subagreements to be performed using state trust monies. Sample forms are provided in Appendix I.
- 21. MAP OF PROJECT - Each application must be accompanied by a project map, denoting the collection system and/or the site plan of the treatment plant. It should delineate:
 - a. Jurisdictional Boundaries.
 - b. Existing versus proposed facilities.
 - c. Eligible components by program, such as interceptor sewers and major pumping stations, as opposed to lateral sewers.
- 22. BASIC DESIGN DATA - A detailed copy of the basic design data for the water pollution abatement facilities must be included.
- 23. PROVISION FOR O&M PROGRAM (Not Applicable to Collection Systems Projects) - The applicant must clearly demonstrate that it has the capability to properly operate and maintain the water pollution abatement facilities. To this end, an operation and maintenance manual (O&M) must be prepared for all wastewater treatment plants which describes the

equipment, develops staffing requirements, and outlines the procedures necessary to keep the facilities operating in an optimum fashion. A manual can also be prepared for a pumping station, depending on the complexity. For further guidance on this issue, please refer to 314 CMR 12.00. Applications for I/I projects should also refer to "Guidelines for performing Operations and Maintenance on Collection Systems."

**ADDITIONAL REQUIREMENTS FOR TIER I AND TIER II PROJECTS
ONLY (ITEMS 24 THRU 31)**

24. DISCHARGE PERMIT - The application must contain a copy of the National Pollutant Discharge Elimination (NPDES) Permit or the Massachusetts Groundwater Discharge Permit, as appropriate. The project must be consistent with those requirements.
25. INFILTRATION/INFLOW - The application must demonstrate that the proposed treatment works are not or will not be subject to excessive infiltration/inflow (I/I). If, after the preparation of an I/I Analysis and/or Sewer System Evaluation Survey, excessive I/I is present, then the application must indicate how this flow will be removed.
26. SLUDGE DISPOSAL CERTIFICATE FROM DEP - The proposed method of residuals disposal must be approved by the Residuals Section of DWPC. This involves a letter in which DEP formally approves the disposal concept, and lists additional requirements and provisions, if any. A copy of the approval letter must be submitted with the application.
27. DISPLACEMENT OF PERSONS OR BUSINESSES - The application must state whether this project has caused, since January 1, 1971, or will cause, the displacement of any individual, family business, or farm as required by the Uniform Relocation And Real Property Assistance Policies Act of 1970 (PL 91-646).
28. VALUE ENGINEERING - All Tier I and Title VI projects with a total estimated construction cost exceeding \$10 million, including sewers, must perform a Value Engineering (VE) study whose recommendations should be implemented to the maximum extent feasible. (Note that Tier II projects may also require VE on a case-by-case basis). This is a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost savings without sacrificing the reliability or efficiency of the project. The application should state that a VE study has been performed. It should be noted that BMF has the final approval of all VE study recommendations.

29. PLAN OF OPERATION - Prior to the award of financial assistance for wastewater treatment facilities, a preliminary plan of operation must be approved by DEP. By the 50% stage of construction, a final plan must be completed and approved. For further guidance on this issue, please contact the appropriate DEP program manager.
30. START-UP SERVICES - For water pollution abatement facilities, the engineering agreement must provide for start-up services during the first year following the initiation of operation. The extent of the services will vary depending on the size and complexity of the project and on the capabilities of the existing or proposed plant personnel. For further guidance on this issue, please contact the appropriate DEP program manager.
31. POST-CONSTRUCTION SERVICES - The applicant must notify BMF in writing on the actual date of initiation of operation. During the first year following initiation of operations of Tier I and Title VI funded facilities, the applicant will monitor the performance of the facilities. One year after initiation of operations, the applicant shall submit a report to BMF outlining whether the project meets performance standards. For further guidance on this issue, please refer to 310 CMR 41.29(2).

PART I

APPLICANT INFORMATION

(attach additional pages as necessary)

1. Legal Applicant/Recipient _____
2. Authorized Representative _____
3. Title _____
- 4A. Telephone Number (include area code) _____
- B. Fax Number (if available) _____
5. Address-Street _____
6. City, State, Zip Code _____
- 7A. Department of Revenue Identification Number _____
- B. BMF Project Identification Number BMF-_____

8A. TYPE OF ASSISTANCETotal Amount

- | | |
|------------------------------|-------|
| 1. <u>Planning</u> _____ | _____ |
| 2. <u>Design</u> _____ | _____ |
| 3. <u>Construction</u> _____ | _____ |

8B. LOCAL FUNDING SOURCE

<u>Type</u>	<u>Amount</u>	<u>Available Balance</u>
<u>Bonds</u> _____	_____	_____
<u>Cash</u> _____	_____	_____
<u>Other</u> _____	_____	_____

8C. PROJECT DESCRIPTION

9. Municipalities Served by Treatment Works Permit Numbers

Consulting Engineer Firm Information:

10. Name _____

11A. Contact Person _____

11B. Title _____

12A. Telephone Number (include area code) _____

12B. Fax Number (if available) _____

13A. Address-Street _____

13B. City, State, Zip Code _____

14. Under the SRF Program what type(s) of financial assistance
are you requesting? (check as applicable)

____ Refinancing of debt incurred

____ Loan(s) for new project(s)

If refinancing, list amount of outstanding debt and maturity
dates.

Amount	Date of Issue	Maturity Date
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	_____	_____

15. To the best of my knowledge and belief, data provided in this application is true and correct; the documentation has been duly authorized by the governing body of the applicant. Furthermore, the applicant assures it possesses the legal authority to apply for the loan, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application. The same resolution, motion, or similar action is directing and authorizing the person identified below as the authorized representative of the applicant to act in connection with the application and to provide such additional information as may be required.

Name of Representative (Type)

Title

Signature of Representative

Date

LEAVE BLANK - FOR MDEP USE ONLY

SRF Loan Number

Date Received

Priority Number

SRF Reviewer

MWPAT Reviewer

PART II

FINANCIAL SECTION INFORMATION

1. Which type of pledge or combination of pledges will you be using in order to secure SRF financial assistance? Check the appropriate box(es).

_____ A. Revenue pledge (user charges or other assessments)

_____ B. General obligation pledge

If you marked A, go to question 2.

If you marked B, go to question 3.

2. Do you have a wastewater revenue bond rating?

_____ Yes _____ No

Revenue bond rating _____ Agency _____

Date the rating was acquired _____

Debt outstanding _____ Original debt obligation _____

Proceed to number 4, Reference Information.

3. Do you have a general obligation rating?

_____ Yes _____ No

If you answered "no" proceed to number 4.

If you answered "yes" identify the rating agency that performed the most recent rating, the year the rating was given, the debt outstanding, and original debt obligation.

General obligation rating _____ Agency _____

Date the rating was acquired _____

Debt outstanding _____ Original debt obligation _____

4. REFERENCE INFORMATION

A.

Town Counsel, City Solicitor or General Counsel Name

Street Address

City, State and Zip Code

Attorney's Telephone Number (include area code)

Do you intend to engage bond counsel? If yes, provide the bond counsel firm, attorney, and city where the bond counsel firm is located. If no, write N/A and proceed with "B".

Bond Counsel Firm

Attorney

City, State and Zip Code

Bond Counsel's Telephone Number (include area code)

B.

Accounting Firm That Issued Your Last Financial Audit

Accountant's Name and Title

Street Address

City, State and Zip Code

Accountant's Telephone Number (include area code)

C.

Financial Advisory Firm (if Applicable)

Financial Name and Title

Street Address

Financial Advisor's Telephone Number(include area code)

D.

Consulting Engineering Firm for this Project

Name and Title of Contact Person

Street Address

City, State and Zip Code

Contact Person's Telephone Number (include area code)

5. CHECKLIST OF DOCUMENTS TO BE SUBMITTED AS PART OF THE
FINANCIAL CAPABILITY SECTION OF APPLICATION

- A. Last year's and the current year's capital and operating budget year-to-date information and next year's budget when it is approved.
- B1. Principal and interest payment schedule of each outstanding bond issue in the local governmental unit. Include all outstanding general obligation and revenue bond issues. Describe, if any, the call provisions for each issue.
- B2. Have you ever defaulted on any of your obligations?
_____ Yes _____ No
If "yes," please provide details.
- C. Current wastewater department budget.
- D. A description of your present user charge system and the proposed changes to cover repayment of this loan. In light of the detail you need to provide in 9-E,

please indicate briefly how you intend to modify your rate structure.

E. Please provide the following information:

1. Under what statute (in addition to M.G.L. ch.29c) will you authorize debt for this project?
2. Will the type of debt you will pledge in order to secure an SRF loan require town meeting vote, city council loan order, or resolution authorizing the debt? If your answer is "yes," please send a copy of the bond ordinance, town meeting vote, city council loan order, or resolution authorizing debt incurred by this application (draft - if not yet approved).
3. In this proposed debt obligation for SRF loan subordinate to any other outstanding debt? If yes, identify which debt obligation and when it was issued.

Issued amount _____ Date of Issued _____

F. Latest official statement if your local governmental unit has previously issued bonds.

G. Rating Agency reports for the past 3 years.

H. Cash flow statements for the past 18 months.

6. GENERAL INFORMATION

A. Population 1970 census _____

Population 1980 census _____

Current population estimate _____

Future population estimate _____
(20 year projection)

B. In addition to submitting your payment schedules of all outstanding bond issues as requested in "Question 5B.1", please provide the following information.

If you are pledging a general obligation to repay the loan, prepare and submit a table of overlapping or underlying debt for your jurisdiction.

C. Project financing plans

Total project cost \$_____

This loan \$_____

Funds on hand \$_____

Grant funds \$_____

Other_____ \$_____
(indicate source and amount)

Source of grant funds _____

Indicate with an asterisk (*) next to the total project cost if this cost is the contract cost. If this cost includes construction period capitalized interest costs, indicate the amount of interest here:

Describe briefly the tentative construction schedule for this project.

D. What is your legal debt capacity? _____

E. List your five larger property taxpayers. Provide the tax year, taxpayer name, the assessed valuation, and the type of business or property description.

<u>Tax Year</u> _____	<u>Assessed Valuation</u>	<u>Type of Business or Property Description</u>
<u>Tax Payer Name</u>		
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

- F. Indicate your five year equalized and assessed valuation trend. For any year which indicates a large increase or decrease (plus or minus 8%), provide a brief description on why this large change (increase or decrease) occurred. Note with an asterisk (*) any year that a revaluation occurred.

<u>Year</u>	<u>Equalized Valuation</u>	<u>Assessed Valuation</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Description _____

- G. Indicate your last three years levies and collection trend.

<u>Year</u>	<u>Amount Levied</u>	<u>Amount Collected in Year of Levy</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

- H. Indicate any general obligation bonds authorized, but unissued. List the amount, term, give a description of their purpose, and schedule for issuance.

Amount(s) \$ _____

Purpose: _____

Issuance Schedule: _____

Indicate any revenue obligation bonds authorized, but unissued. List the amount, term, give a description of their purpose, and schedule for issuance.

Amount(s) \$ _____

Purpose: _____

Issuance Schedule: _____

- I. Future general obligation borrowing plans. Indicate the year, the amount and purpose.

<u>Year</u>	<u>Amount</u>	<u>Purpose</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Future revenue obligation borrowing plans. Indicate the year, the amount and purpose.

<u>Year</u>	<u>Amount</u>	<u>Purpose</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. FINANCIAL PROFILE

Attach your last three years of historical financial audits or financial statements with letters of recommendation.

<u>Year</u>	<u>Audit/Statement Completed? (Yes or No)</u>
_____	_____
_____	_____
_____	_____
_____	_____

8. ECONOMIC PROFILE

- A. List the 10 largest employers in the service area which have a significant impact on your municipality, their most recent employment levels, and type of business.

<u>Employer</u>	<u>Number of Employees</u>	<u>Type of Business</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- _____
- _____
- _____
- B. Provide a description of the project's service area i.e., location, municipalities to be served by the project, population, etc.
- _____
- _____
- _____
- _____
- _____

9. SYSTEM PROFILE

- A. What is the total planned treatment capacity of the system? (in mgd)
- _____
- _____

- B. Is your system under a court order to meet specific state or federal standards by a certain date? If yes, provide pertinent information.

_____ No _____ Yes

- C. (Skip if unsewered.) Provide average and peak daily flows of the system for the last five years.

<u>Year</u>	<u>Average Daily Flow</u> <u>(in mgd)</u>	<u>Peak Daily Flow</u> <u>(in mgd)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

D. List the largest users or proposed users of the system (those individually greater than 2% of system's revenues).

<u>Customer</u>	<u>% of Total System Revenues</u>	<u>Type of Business</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Are there any special contractual arrangements or proposed arrangements regarding major industrial users that individually contribute more than 5% of the sewer system revenues? If yes, indicate the industry's name and a description of the contractual arrangements.

<u>Customer</u>	<u>Description of Contractual Arrangements</u>
_____	_____
_____	_____
_____	_____

E. (Skip if unsewered) Provide a brief description of the system's current rate structures, i.e., frequency of payments, rate change process, etc.

Waste Water Revenue History: Last 12 Months:

<u>Month</u>	<u>Year</u>	<u>Amount Billed</u>	<u>Amount 30 Days or More Delinquent</u>
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

Wastewater Revenue History: Last 3 Years:

	<u>Year</u>	<u>Amount Billed</u> <u>(12 months total)</u>	<u>Amount 30 Days</u> <u>or More Delinquent</u>
Previous year	_____	\$ _____	\$ _____
Previous year	_____	\$ _____	\$ _____
Previous year	_____	\$ _____	\$ _____

F. (Skip if unsewered.) On a separate attachment, provide ten years of rate change history for all types of rates and charges (see instructions).

G. (Skip if unsewered.) Are there any rate increases now being considered to fund the proposed sewer project? If yes, what effect will it have on monthly user charges for a typical residential user? How much of the new charges are for operation and maintenance and how much for capital costs? If no, when do you expect a rate increase?

_____ Yes _____ No

Rates will increase from \$ _____ to \$ _____

Operation and maintenance \$ _____ Capital Costs \$ _____

If you answered "yes" to the above question, will these rate increases be enacted prior to the issuance of an SRF loan award? _____ Yes _____ No

H. By what amount are annual revenues projected to increase as a result of this project over the next five years? \$ _____

Current annual sewer revenues \$ _____

19__ 19__ 19__ 19__ 19__

Proposed annual sewer revenues \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

Increase in revenues \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

Revenue increased from:

a. property taxes \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

b. Customer base \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

c. rates \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

d. hookup fees \$_____ \$_____ \$_____ \$_____ \$_____

e. other (i.e.,
increased special \$_____ \$_____ \$_____ \$_____ \$_____
assessments, etc.)

I. By what amount are annual operating and maintenance expenses expected to increase as a result of this project \$_____

Current operating and maintenance expenses
(skip if unsewered) \$_____

Projected operating and maintenance expenses \$_____

Increases in O&M expenses (skip if unsewered) \$_____

J. By what amount are annual debt service costs expected to increase over the next 20 years as a result of this project? Attach a table showing the annual increase in debt service by using the example shown below (assume 8 percent interest).

<u>Existing Current Annual</u> <u>Debt Service Costs</u>	<u>Projected Annual Debt</u> <u>Service Costs For</u> <u>This Loan</u>	<u>Total Annual Debt</u> <u>Service Costs</u>
19____ \$_____	\$_____	\$_____

.Thru

20____ (20th year) \$_____ \$_____ \$_____
For unsewered governmental units with no prior debt, please indicate the projected annual debt service costs for this loan. \$_____

Indicate sources for estimates in H, I, and J.

10. CAPITAL IMPROVEMENTS PROFILE

A. Do you anticipate any future (up to 20 years) wastewater system needs other than the proposed project now being funded, e.g. for compliance with state and federal regulations?

B. How do you plan to fund any wastewater system improvements or additions in the future?

Future borrowing proposed for wastewater management in addition to the amount of this application.

<u>Year</u>	<u>Amount</u>	<u>Purpose</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

11. LEGAL

A. Is there any litigation or threatened litigation or factors known which may substantially affect the operation of the governmental unit or the operation of the wastewater system in the future? If "yes", please provide background information regarding the litigation factors and the current status.

_____ No _____ Yes

Retirement liabilities \$ _____ Pension liabilities \$ _____

Is this information contained in your audited financials?

_____ No _____ Yes

PART III
PROJECT SECTION INFORMATION

1. Plans and Specifications - submittal(s)

<u>Contract No.</u>	<u>Contract Name</u>	<u>Actual or Estimated Date of Submittal</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Construction Schedule - (estimated)

Contract No(s).				
Bid Advertisement (date)				
Contract Award (date)				
Contract Completion (date)				
Calendar Days to Complete				

SUMMARY OF COSTS

	Total Costs	Eligible Costs
A. <u>PLANNING SERVICES</u>		
1.) Facilities Planning.....		
2.) Surveys.....		
3.) Borings.....		
4.) Other.....		
5.) Final Planning.....		
6.) Surveys.....		
7.) Borings.....		
8.) Infiltration/Inflow Analysis...		
9.) Sewer System Evaluation Survey.		
10.) Other.....		
B. <u>CONSTRUCTION SERVICES</u>		
1.) General Supervision.....		
2.) Resident Engineering.....		
3.) Testing of Materials.....		
4.) As Built Plans.....		
5.) Operation & Maintenance Manual.		
6.) Start Up Supervision.....		
7.) Sewer Use Charges.....		
8.) Other.....		
C. <u>CONSTRUCTION</u> (use contract bid proposals) Contract Name or Number		

SUB TOTAL		
D. Legal and Fiscal		
E. Administration		
F. Contingency		
G. Land Acquisition		
TOTAL		

Date of Estimate _____ Source of Estimate _____
Associated Engineering News Record Construction Cost Index _____

APPENDIX A

310 CMR 41.00



#195

The Commonwealth of Massachusetts

Office of the Secretary of State

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: 310 CMR 41.00

CHAPTER TITLE: Financial Assistance for the Costs of Water Pollution Abatement Projects

AGENCY: Department of Environmental Protection

SUMMARY OF REGULATION

State the general requirements and purposes of this regulation:

These Regulations establish the policies and procedures for approving financial assistance for the costs of water pollution abatement projects in compliance with Section 27 through Section 33E of chapter twenty-one of the General Laws inclusive as amended by Chapter 275 of Acts of 1989 and Title VI of the Federal Clean Water Act and shall be administered by the Bureau of Municipal Facilities within the Department of Environmental Protection.

REGULATORY AUTHORITY: M.G.L. c.21 s27 through 33E

AGENCY CONTACT: Glenn Haas

PHONE: 617 292-5748

ADDRESS: One Winter Street, Boston, MA 02108

Compliance with M.G.L. C.30A, and Promulgation and Attestation

EMERGENCY ADOPTION

If this regulation is adopted as an emergency regulation, state the nature of the emergency:

PRIOR NOTIFICATION AND/OR APPROVAL

If prior notification to and/or approval of the Governor, legislature or others was required, list each notification, approval and date, including notice to the local Government Advisory Commission:

Executive Order 145 - Notice to both the Department of Community Affairs and the Local Government Advisory Committee was provided March 2, 1990.

Executive Order 167 - Notice of both the Secretary of the Executive Office of Environmental Affairs and the Governor's Office of Economic Development was provided March 2, 1990.

PUBLIC REVIEW

Was notice of the hearing or comment period filed with the Secretary of State, published in appropriate newspapers and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period?

Yes ☒ Date of public hearing or comment period: April 13, 1990

FISCAL EFFECT

Estimate the fiscal effect on the public and private sectors:

For the first and second years: \$750 million in assistance to communities

For the first five years: \$900+ million in assistance to communities

No fiscal effect: ☐

CODE OF MASSACHUSETTS REGULATIONS INDEX

List key subject entries that are relevant to this regulation:

PROMULGATION

State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) to repeal, replace or amend. List by CMR number:

Replaces 314 CMR 10.00, 314 CMR 11.00, 314 CMR 13.00 and 314 CMR 14.00

ATTESTATION

SEE ATTACHED

The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.

ATTEST:

Signature Date: _____

Publication

To be completed by the Regulations Division

MASSACHUSETTS REGISTER NUMBER: 635

DATE: 5/25/90

EFFECTIVE DATE: 5/25/90

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages:
310 CMR Vol. 13

Insert these pages:

943-980

NOTE- Due to the addition of this new chapter to the end of 310 CMR Vol. 13 it is suggested that 310 CMR 1.00 through 10.00 be shifted to Volume 12 of the code.

A TRUE COPY ATTEST

Michael Joseph Connolly

MICHAEL JOSEPH CONNOLLY
SECRETARY OF STATE

DATE 5/17/90 CLERK WJR



Daniel S. Greenbaum
Commissioner

The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

Department of Environmental Quality Engineering

One Winter Street, Boston, Mass. 02108

In accordance with the provisions Chapter 688 of the Acts of 1989, the Department certifies that the attached regulations 310 CMR 41.00 have the following impacts on small businesses.

1. The regulations do not change or add any reporting or recordkeeping requirements.
2. These regulations do not duplicate or conflict with any requirements placed on small businesses by any other relevant regulations of this agency.
3. The appropriateness of performance standards versus design standards are not applicable to these regulations.
4. These regulations continue the requirement that a percentage of work receiving assistance be directed toward minority or women owned businesses. These businesses are often small and therefore the impact of these regulations is positive

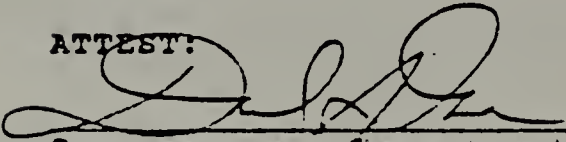
A handwritten signature in cursive script, appearing to read "D. S. Greenbaum", written over a horizontal line.

Daniel S. Greenbaum, Commissioner

ATTESTATION

Section 41.03 (3) of the regulation described herein and attached hereto is a true copy of the regulation adopted jointly by Department of Environmental Protection and Executive Office Administration and Finance.

ATTEST:



Commissioner, Department of Environmental Protection

DATE: 4/27/90



For Executive Office Administration and Finance

DATE: 4/27/90

The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.

ATTEST:



Signature

DATE: 4/27/90

310 CMR: 41.00: FINANCIAL ASSISTANCE FOR THE COSTS OF WATER POLLUTION ABATEMENT PROJECTS

Section

- 41.00: AUTHORITY AND EFFECT
- 41.01: Authority
- 41.02: Effective Date
- 41.03: Transition Projects

- 41.10: GENERAL PROVISIONS
- 41.11: Purpose
- 41.12: Definitions
- 41.13: Limitation on Award
- 41.14: Affirmative Action Requirements
- 41.15: Agreement Conditions
- 41.16: Priority System
- 41.17: User Charge
- 41.18: Financial Capability
- 41.19: Water Resources and Wastewater Planning Requirements

- 41.20: TIER I AND TITLE VI PROJECTS
- 41.21: General
- 41.22: Priority List
- 41.23: Eligible Projects
- 41.24: Award of Financial Assistance
- 41.25: Application Procedures
- 41.26: Allowable Costs
- 41.27: Unallowable Costs
- 41.28: Facilities Planning
- 41.29: Miscellaneous Requirements

- 41.30: TIER II PROJECTS
- 41.31: General
- 41.32: Priority List
- 41.33: Award of Financial Assistance
- 41.34: Application Procedures
- 41.35: Allowable Costs
- 41.36: Unallowable Costs
- (41.37 through 41.39 Reserved)

- 41.40: INFILTRATION INFLOW PROJECTS
- 41.41: General
- 41.42: Priority List
- 41.43: Award of Financial Assistance
- 41.44: Application Procedure
- 41.45: Allowable Costs
- 41.46: Unallowable Costs
- (41.47 through 41.49 Reserved)

- 41.50: COLLECTION SYSTEMS
- 41.51: General
- 41.52: Priority List
- 41.53: Award of Financial Assistance
- 41.54: Application Procedures
- 41.55: Limitation on Eligibility
- 41.56: Ineligible Costs
- (41.57 through 41.59 Reserved)

- 41.60: ARCHITECTURAL/ENGINEERING SUBAGREEMENTS
- 41.61: Cost and Price Considerations
- 41.62: Provision for Compensation
- 41.63: Compensation Procedures
- 41.64: Required Provisions-Consulting Engineering Agreements
- (41.65 through 41.69 Reserved)

41.00: continued

(41.70: RESERVED FOR PROJECTS FOR THE IMPLEMENTATION OF NON-POINT SOURCE CONTROL MANAGEMENT PROGRAMS AND ESTUARY CONSERVATION AND MANAGEMENT PLANS)

41.00: AUTHORITY AND EFFECT

41.01: Authority

(1) These regulations are adopted pursuant to M.G.L. c. 21, s. 27A and St. 1989 c. 275, s. 3. Financial capability regulations, (310 CMR 41.03(3) are, and financial classification regulations identified in 310 CMR 41.18 will be, adopted jointly with the Executive Office of Administration and Finance pursuant to M.G.L. c.21, s. 27A paragraph (d)(e).

41.02: Effective Date

(1) These regulations shall take effect upon promulgation, and shall govern applications for financial assistance beginning with the priority lists for fiscal year 1990 for 310 CMR 41.20 - 41.29, and for fiscal year 1981 for 310 CMR 41.30 - 41.39, 41.40 - 41.49, and 41.50 - 41.59.

41.03: Transition Projects

(1) For the purposes of the second paragraph of St. 1989 c. 275, s. 2, the Department has identified the following categories of projects as projects not typically funded by federal grants:

(a) Collection systems projects typically funded pursuant to 314 CMR 10.00, et seq. During fiscal year 1990, the state FY90 priority list and the Division of Water Pollution Control regulations at 314 CMR 10.00 et seq. shall be applicable to such projects.

(b) Projects for the identification and correction of infiltration and inflow into sewer systems, typically funded pursuant to 314 CMR 13.00 et seq. During fiscal year 1990, the FY89 - FY90 priority list established by the Division of Water Pollution Control on July 21, 1989, and the Division of Water Pollution Control regulations at 314 CMR 13.00 et seq. shall be applicable to such projects.

(c) Combined sewer outfall projects and federally-eligible projects for the abatement of water pollution that did not receive federal grants, typically funded pursuant to 314 CMR 14.00 et seq. During fiscal year 1990, the FY89 - FY90 priority list established by the Division of Water Pollution Control on October 1, 1989, and the Division of Water Pollution Control regulations at 314 CMR 14.00 et seq. shall be applicable to such projects.

(2) The priority lists established by the Division of Water Pollution Control for the federal construction grants and Title VI programs for federal fiscal years 1988 and 1989, as presented in the Intended Use Plan submitted to the United States Environmental Protection Agency, shall constitute the first Intended Use Plan for purposes of Title VI. The Department may amend or modify the first Intended Use Plan in accordance with applicable federal requirements. The federal and state eligibility regulations, policies and procedures applicable to the federal construction grant program shall be applicable to projects identified in the first Intended Use Plan.

(3) As provided in St. 1989 c. 275, ss. 18 - 19, the Department and the Executive Office of Administration and Finance acting jointly, hereby establish the following regulation classifying financial capability of local governmental units, as required by M.G.L. c. 21 c. 27A for purposes of financial assistance provided on the basis of the federal FY88 and FY89 priority lists:

- (a) All applicants for assistance for projects on the fundable portion of the federal FY88 and FY89 priority list shall be eligible to receive loans for such projects, on which no interest is charged.
- (b) All applicants with projects on the fundable portion of the federal FY88 priority list that received a federal grant but did not receive a state grant shall constitute a class whose members shall be eligible to receive an equal level of additional subsidy in the form of supplemental state grants pursuant to M.G.L. c. 21, s. 33E such that the total financial assistance provided, including the federal grant, is the financial equivalent of a grant of up to ninety percent of the eligible costs of such projects.
- (c) All applicants with projects on the fundable portion of the federal FY88 priority list that did not receive a federal grant, and all applicants with projects on the fundable portion of the federal FY89 priority list, shall constitute a class whose members shall be eligible to receive additional supplemental state grants pursuant to M.G.L. c. 21, s. 33E such that the total financial assistance provided, is the financial equivalent of a grant of up to seventy-five percent of the eligible costs of such projects.

41.10: GENERAL PROVISIONS

The provisions of 310 CMR 41.10 through 41.19 shall apply to all applicants and all projects for which financial assistance is sought pursuant to M.G.L. c. 21, ss. 27-33E. Supplemental regulations for specific programs are contained in 310 CMR 41.20 through 41.64.

41.11: Purpose

- (1) These Regulations establish the policies and procedures for approving financial assistance for the costs of water pollution abatement projects in compliance with M.G.L. c. 21, ss. 27-33E inclusive as amended by St. 1989 c. 275 and Title VI of the Federal Clean Water Act and shall be administered by the Bureau of Municipal Facilities within the Department of Environmental Protection.
- (2) The Commissioner shall issue as deemed necessary and appropriate, administrative procedures, policies and guidance documents required to effectively carry out these regulations.

41.12: Definitions

As used in these regulations 310 CMR 41.00 et seq. the following terms shall have the following meaning unless otherwise clearly required by context.

Abatement Facilities: Facilities for the purpose of treating, neutralizing, or stabilizing sewage and such industrial and other wastes as are disposed of by means of the facilities, including treatment or disposal plants, the necessary intercepting outfall and outlet sewers, pumping stations integral to such facilities and sewers, equipment and furnishings thereof and their appurtenances.

Alternative technology: Wastewater treatment processes and techniques which provide for the reclaiming and reuse of wastewater, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land applications of effluent and sludge; aquifer recharge; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and on-site systems.

Annual Costs: Annual costs include the residential portions of the annual operations & maintenance cost and debt service costs for existing water pollution abatement projects and the proposed project.

Board: The Board of trustees of the water pollution abatement trust.

Bureau: The Bureau of Municipal Facilities within the Department of Environmental Protection.

Clean Water Act: The Federal Water Pollution Control Act, Public Law 92500, 33 USC, s. 1251 et seq. as amended.

Collection System: Each and all of the common lateral sewers and appurtenances of publicly owned treatment works which are primarily installed to receive wastewaters from individual structures or from private property, and which include service connection "Y" fittings and service connections within the boundary of the public way or easement.

Commissioner: The Commissioner of the Department of Environmental Protection or designee.

Cost: As applied to any water pollution abatement project, any or all costs, whenever incurred, approved by the department in accordance with M.G.L. c. 21, s. 27A, of carrying out a project including, without limiting the generality of the foregoing, costs for planning, preparation of studies and surveys, design, construction, expansion, facilities, improvement and rehabilitation, acquisition of real property, personal property, materials, machinery or equipment, start-up costs, demolitions and relocations, reasonable reserves and working capital, administrative, legal and financing expenses, and other expenses necessary or incidental to the aforesaid.

Department: The Department of Environmental Protection.

Deputy Commissioner: The Deputy Commissioner for Municipal Assistance or designee.

Equivalency Projects: Projects which must comply with those requirements of Title II of the Federal Clean Water Act specified in section 602(b)(6) of the Clean Water Act.

Federal Eligible Projects: Projects which are eligible for inclusion on the State's Priority List for loans from Title VI funds.

First Use Funds: Those funds which result from a Federal Capitalization Grant pursuant to Title VI, the minimum required state match and the repayments of the first round of loans awarded from these sources.

Fund: The Water Pollution Abatement Revolving Fund established pursuant to M.G.L. c. 29, s. 2L.

General Revenues: When used with reference to a local governmental unit, revenues, receipts, assessments and other monies of a local governmental unit, and all rights to receive the same including without limitation (i) revenue as defined in M.G.L. c. 44, s. 1, (ii) local system revenues (iii) assessments upon or payments received from any other local governmental unit which is a member or service recipient of the local governmental unit, (iv) proceeds of loans made in accordance with chapter twenty-nine and of grants made in accordance with M.G.L. c. 21, s. 33E, (v) investment earnings, (vi) reserves for debt service or other capital or current expenses, (vii) receipts from any tax, excise or fee all or a part of the receipts of which are payable or distributable to or for the account of the local governmental unit, (viii) local aid distribution and (ix) receipts, distributions, reimbursements and other assistance from the United States; provided, however, that local general revenues shall not include any monies restricted by law to specific statutorily defined purposes inconsistent with their treatment as general revenues for purpose of this chapter.

Grant Equivalency or Financial Equivalent of a Grant: The standard measure used by the Department and the Trust to determine financial assistance to be provided for the eligible costs of a project. Grant equivalency shall be measured by comparing the present value of the debt service payments on two loans, each in the amount of the eligible costs of the project approved by the

Department, one without consideration of the financial assistance approved by the Department and one taking such financial assistance into account, with the result that the fraction, expressed as a percentage, obtained by dividing (1) the difference between the respective present values of the debt service payments on such loans by (2) the present value of the debt service payments on the loan which does not take into consideration such financial assistance, is not less than the level of financial assistance approved by the Department.

Household: A household consists of all the persons who occupy a housing unit. A house, an apartment or other group of rooms, or a single room, is regarded as a housing unit, when it is occupied or intended for occupancy as separate living quarters. A household includes the related family members, all the unrelated persons, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated persons sharing a housing unit as partners, is also counted as a household.

Infiltration: Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through means which include, but are not limited to, defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Inflow: Water other than wastewater that enters a sewer system (including sewer service connections) from sources which include, but are not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Infiltration/Inflow Rehabilitation: Construction associated with the removal of infiltration and inflow from abatement facilities.

Loan: Any form of financial assistance subject to repayment which is provided by the trust to a local governmental unit for all or any part of the cost of a water pollution abatement project. A loan may (i) provide for planning, construction, bridge or permanent financing, (ii) be disbursed in anticipation of

reimbursement for or direct payment of costs of a project or take the form of a guarantee, line of credit or other form of financial assistance, and (iii) may be issued at such rate or rates of interest, including without limitation variable rates and zero interest, may mature at such time or times and be redeemed at the option of the board or the local governmental unit, all as may be determined in accordance with chapter twenty-nine of the General Laws.

Loan agreement: Any agreement entered into between the trust and a local governmental unit pertaining to a loan or local governmental obligations. A loan agreement may contain, in addition to financial terms, provisions relating to the regulation and supervision of a water pollution abatement project or the wastewater system of which it is a part, to which provisions the department may join as a party to the agreement as authorized in M.G.L. c. 21, s. 27A. The term "loan agreement" shall include, without limitation, a loan agreement, trust agreement, trust indenture, security agreement, reimbursement agreement, guarantee agreement, bond or note resolution, loan order or similar instrument.

Local aid distributions: Any receipts, distributions, reimbursements or other assistance payable by the Commonwealth to or for the account of a local governmental unit including, without limitation, payments under M.G.L. c. 58, ss. 18A-18E and under any other local reimbursement or assistance program described in M.G.L. c. 58, s. 25.

Local government unit or local governmental unit: Any town, city district, commission, agency, authority, board or other instrumentality of the commonwealth or of any of its political subdivisions, including any regional local governmental unit, which is responsible for the ownership or operation of a water pollution abatement project and is authorized by a bond act to finance all or any part of the cost thereof through the issue of bonds.

Local system revenues: All rates, rents, fees, assessments, charges and other receipts derived or to be derived by a local governmental unit from any water pollution abatement project, any system of which such projects are a part and any other revenue producing facilities under its ownership or control, or from the services provided thereby, including without limitation proceeds of grants, gifts, appropriations and loans, including the proceeds of loans or grants made by the trust or the department, investment earnings, reserves for capital and current expenses, proceeds of insurance or condemnation and the sale or other disposition of property; provided, however, that local system revenues shall not include any ad valorem taxes levied directly by the local governmental unit on any real and personal property.

Operation and Maintenance Costs: Those expenditures during the useful life of the wastewater treatment facilities which are necessary for the proper operation and maintenance of the facilities including, but not limited to replacement stock for sewers, costs relating to the replacement and repair thereof including street work, maintenance of all equipment and related appurtenances necessary for the provision of wastewater services, all administrative costs relating to the collection of said sewer fees, all costs of chemicals relating to treatment of wastewater, and costs relating to the personnel of the local government unit.

Per Capita Income: Per capita income will be based on the latest estimates determined by the U.S. Bureau of the Census and the U.S. Department of Commerce, Bureau of Economic Analysis.

Public way: Public rights of way or easements for water pollution abatement projects.

Regional local governmental unit: A local government unit which provides wastewater collection or treatment services either on a wholesale or retail basis to service recipients in two or more cities or towns, or designated parts thereof, and which derives all or part of its general revenues or local system revenues by assessment or other charge on such cities or towns.

41.12: continued

State fiscal year: The fiscal year of the state government beginning July 1 and ending June 30.

Tier I Projects: The planning, design and construction of projects in categories eligible for Title VI funds and major system rehabilitation and correction of combined sewer overflows.

Tier II Projects: Projects which did not receive high enough priority pursuant to 310 CMR 41.22 and upgrades and rehabilitation to facilities which previously received grants.

Title VI: Title VI of the Clean Water Act.

Trust: The water pollution abatement trust established by M.G.L. c. 29.

Value effective: The removal of infiltration or inflow which is excessive, and which is demonstrated to the satisfaction of the Deputy Commissioner to result in significant technical, environmental, health or cost benefits.

Value engineering: A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Water pollution abatement project: Any abatement facilities, including without limitation rehabilitation of abatement facilities to remove, curtail or otherwise mitigate infiltration and inflow, collection system, treatment works and treatment facilities as defined in M.G.L. c. 21, s. 26A, and any eligible facilities for implementation of a nonpoint source pollution control management program or estuary conservation and management plan pursuant to the Clean Water Act.

41.13: Limitation on Award

(1) From authorizations received each fiscal year, the Commissioner shall allocate funds to the various programs in accordance with the following formula

o Loans and grants for construction projects pursuant to 310 CMR 41.20 - 41.29	60%
o Loans and grants for planning and design projects pursuant to 310 CMR 41.20 - 41.29	10%
o Loans and grants for projects pursuant to 310 CMR 41.30 - 41.39	7.5%
o Loans and grants for projects pursuant to 310 CMR 41.40 - 41.49	7.5%
o Loans and grants for projects pursuant to 310 CMR 41.50 - 41.59	10%
o Reserves for contingencies and project cost increases	5%

Funds allocated above for construction projects pursuant to 310 CMR 41.20 - 41.29 includes the Title VI funds awarded to the state by the Environmental Protection Agency with the exception of those funds awarded to the state for the administration of the Title VI portion of the fund. In addition, the Commissioner shall reserve 5% of the Title VI funds awarded each fiscal year along with the state matching funds for the purpose of providing assistance for projects pursuant to 310 CMR 41.70 - 41.79.

Nothing in this section shall prohibit the Commissioner from allocating the funds necessary to fully meet the required match to utilize all Title VI funds available in any fiscal year. If in any fiscal year there is an insufficient number of projects to utilize the funds allocated for a particular program, the Commissioner may reallocate such funds to another program.

(2) Financial assistance shall be provided through a loan agreement executed between the applicant and the Trust. Upon certification by the Department,

41.13: continued

the Trust shall prepare the loan agreement and deliver same to the applicant for execution. The loan agreement shall specify the nature and terms of assistance provided. The agreement shall contain such terms and conditions as the Department deems necessary and appropriate for the proper performance of the project. Additional financial assistance may be provided through supplemental grants pursuant to M.G.L. c. 21, s. 33E.

(3) Project costs incurred by a local government unit prior to its notice that the Department has certified its application to the Trust pursuant to these regulations shall not be allowable costs, with the following exceptions as applicable:

(a) Preliminary engineering, facilities planning, design or related professional services and preliminary construction work, such as advance acquisition of major equipment items requiring long lead times, or advance construction of portions of the project in emergencies or instances where delay could result in significant cost increases or jeopardize the project, may be approved by the Department prior to the award of assistance as eligible project costs, but only if:

- the applicant submits a written and adequately substantiated request for approval; and
- written approval by the Department is obtained before initiation of advanced acquisition or construction.

The approval of preliminary engineering, facilities planning, design, advance acquisition of equipment, or advance construction work will not constitute a commitment for approval of financial assistance for a subsequent project, but will allow payment for the previously approved costs as allowable project costs upon subsequent award of financial assistance, if requested and approved before the award. In instances where such approval is obtained, the applicant proceeds at its own risk. Payment for such costs will not be made unless assistance for the project is awarded.

(b) The project was initiated with the Department's prior approval subsequent to January 1, 1988 but prior to the effective date of these regulations. In instances where such approval is obtained, the applicant proceeds at its own risk. Payment for such costs will not be made unless assistance for the project is awarded.

(4) Costs which are incurred in excess of the approved project costs shall not be allowable except if written prior approval is granted by the Department and the loan agreement is amended to reflect such costs.

(5) A recipient of financial assistance pursuant to these regulations shall exercise its best effort to accomplish the work program set forth in the loan agreement within the financial limits established therefor in the loan agreement. When the recipient has good reason to believe that project costs which it will incur will exceed or be substantially less than those previously approved in the loan agreement, the local government unit shall so notify the Department promptly in writing. As soon thereafter as practicable, the local government unit shall submit to the Department revised estimates of the total costs for performance of the project. The Department shall not be obligated to certify nor the Trust to pay for costs incurred in excess of the approved award amount or of any amendment to it unless and until the Department has approved an increase in the award amount and a written amendment to the loan agreement has been issued therefor.

(6) Eligible project costs shall be the final approved eligible costs as determined by the Department upon completion of the project. In the event that the project costs are audited, the final eligible costs shall be those costs approved by the Department at the completion of the audit.

(7) The short-term interest accrued during construction shall be eligible for refinancing at the approved subsidy level at the completion of the project.

(8) The Department may approve state loans for ineligible costs associated with otherwise eligible projects. Such loans are limited to the principal amount of not more than 15% of the associated eligible project costs and must

41.13: continued

come from allocations (excluding Title VI funds) contained in 310 CMR 41.13(a) of this section. Loans made for ineligible project costs shall receive no financial subsidy from the Commonwealth.

41.14: Affirmative Action Requirements

(1) Recipients shall adopt, for use in all contracts for construction projects with a dollar value in excess of ten thousand dollars (\$10,000), an adapted version of the Commonwealth of Massachusetts' "Supplemental Equal Employment Opportunity Anti-discrimination and Affirmative Action Program." Such contract may include minority workforce percentages greater than those required for the geographical locations of the construction project as set forth in the Supplemental Program.

(2) Local government units receiving assistance shall make positive efforts to use minority and women owned business sources for supplies and services. Such efforts should achieve a goal of 11% participation for minority business (MBE) and 5% participation for women owned business (WBE) but at a minimum should allow these sources the maximum feasible opportunity to compete for subagreements to be performed using state trust monies.

(3) Prior to the publication of the availability of any contract for construction work, to be performed under any loan or grant program with a total dollar value in excess of ten thousand dollars (\$10,000), the recipient shall notify The State Office of Minority and Womens Business Assistance (SOMWBA) of its intent to solicit bids and shall make available to SOMWBA, upon request, copies of the proposal to bid, specifications and plans, and bid invitations.

41.15: Agreement Conditions

The Commissioner may include in any certification of a loan to the trust such conditions as he deems necessary and appropriate. All such conditions shall be expressed in a project regulatory agreement executed by the applicant and incorporated into the loan agreements by the trust. All certifications shall require that loan agreements contain at a minimum, unless otherwise deemed appropriate by the Commissioner, the following conditions:

(1) The applicant hereby agrees to submit to the Department an executed copy of the contract for engineering services for this project within sixty (60) days of the date of award. No payments will be processed until compliance with this condition is attained.

(2) At the 60% completion point of any engineering contract, as determined by contract duration of an engineering contract, the recipient shall submit to the Department a status report including work completed to date, budget expended to date, and budget required to complete the contract. No additional reimbursements shall be processed until this provision is complied with.

(3) If any increase in the project costs covered by a loan agreement is required, the recipient shall notify the Department in accordance with 310 CMR 41.13(5) and submit a status report. Said status report shall include the work completed to date, budget expended to date, and budget required to complete the contract.

(4) The recipient shall certify prior to final payment that all work included in the loan agreement for the project as approved by the Department has been completed and performed in accordance with said loan agreement.

(5) The recipient shall establish project accounts which shall be maintained in accordance with generally accepted government accounting standards.

(6) The recipient agrees to assure economical and efficient operation of the treatment works (including replacement).

(7) The Commissioner shall include in all certifications, conditions to provide for the following:

41.15: continued

- (a) Enforcement of mitigation measures developed as a result of a review of the project under the Massachusetts Environmental Policy Act, M.G.L. c. 30, ss. 61-62H or as a result of a review by the Department of the Project including the Environmental Notification Form filing.
- (b) Suspension or termination of payments to the recipient under the loan agreement in instances where he determines that there is probable cause to believe that the loan agreement was obtained on the basis of fraud, deceit, or illegality or that the recipient has failed to comply with these regulations or the terms of the loan agreement.
- (c) A schedule to initiate and complete the project as well as other milestones deemed important. Failure to meet the milestones may result in the Department requiring the suspension of payments and/or termination of the loan agreement.

41.16: Priority System

Prior to the beginning of each state fiscal year the Commissioner shall establish for each program annual priority lists which shall rank projects proposed by local government units in numerical descending order in which they are eligible to receive assistance. In establishing said lists, the Commissioner may request local government units to supply such project information as deemed necessary to allow for the proper rating and ranking of the projects. The Commissioner may establish a reasonable deadline for the receipt of any such information. Prior to adopting the priority lists the Commissioner shall hold a public hearing to receive and consider public comment on the proposed lists. Notice of the public hearing will be published in one or more newspapers of general circulation 30 days prior to the date of the hearing. Eligible projects which the Commissioner deems ready to proceed and for which funds are available in the fiscal year in which the priority lists are established shall be placed in numerically descending order of priority on the appropriate "Fundable" Priority List. Eligible projects for which financial assistance may be available during the succeeding year(s) shall appear in numerically descending order of priority on the appropriate Extended Priority Lists. Each annual Priority List shall remain in effect through June 30.

In the event that the Department must choose between two or more projects having the same priority point value, the Department shall rank the projects in order of the earliest date of receipt of project information for that fiscal year.

If the Commissioner determines that a project which appears on the fundable priority list will not be ready to proceed during the fiscal year in which it appears, that project may be removed from the fundable priority list and placed in numerical order on the extended priority list. In such event, provided adequate funding is available, the highest ranking project(s) on the extended list which is ready to proceed shall be raised in numerical order to the fundable list.

41.17: User Charge

In order to receive assistance for construction, the local governmental unit must either have in place or agree to adopt a user charge system approved by the Department. The user charge system must be designed to produce adequate revenues required for operation and maintenance (including replacement) of the recipient's abatement facilities. Said system shall be designed to generate sufficient revenues to cover at a minimum, replacement stock for sewers, costs relating to the replacement and repair thereof including street work, maintenance of all equipment and related appurtenances necessary for the provision of wastewater services, all administrative costs relating to the collection of said sewer fees, all costs of chemicals relating to the treatment of wastewater, and costs relating to the personnel of the local government unit. It shall provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for such increased cost.

- (1) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Deputy Commissioner), of the rate and that portion of the user charges which are attributable to wastewater treatment services.

41.17: continued

(2) Financial management system. Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(3) Adoption of system. One or more local government unit legislative enactments or other appropriate authority actions must incorporate the user charge system. If the project accepts wastewater from other local government units, the subscribers receiving waste treatment services from the awardee shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated by appropriate local government unit legislative enactments or other appropriate authority actions of all local government units contributing wastes to the treatment works.

(4) Inconsistent agreements. The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of this section.

(5) On and after July 1, 1991, the Department shall not approve a loan or grant to a local governmental unit to finance costs of a water pollution abatement project under these regulations unless the local governmental unit receiving such financial assistance shall adopt a pricing system for wastewater services by ordinance, rule, regulation, vote or other appropriate action effective for fiscal years beginning not later than July 1, 1992 which provides for assurance of service to households who by reason of low income are unable to pay the charge for service otherwise applicable whether the costs of such services are included in an annual tax levy or are collected by rates, charges, fees, assessments or other charges. The foregoing requirements shall not apply to a regional local governmental unit, provided that each city, town commission, board or other instrumentality which is a member or other service recipient thereof shall adopt a pricing system satisfying the foregoing requirements or such member or other recipient shall be ineligible to receive its allocable share of any financial assistance provided the regional local governmental unit.

(6) On and after June thirtieth, nineteen hundred and ninety-one, the Department shall not approve a loan or grant to a local governmental unit to finance costs of a water pollution abatement project under M.G.L. c. 21, s. 27A or 33E unless the local governmental unit receiving such financial assistance shall have adopted by ordinance, rule, regulation, vote or other appropriate action, to take effect within ninety days of the award of the loan or grant, a pricing system for wastewater services which reflects the true cost of such services to the local governmental unit, and which is based on a flat rate per volume of wastewater processed or on the basis of ascending unit rates based on the quantity or strength of wastewater processed, whether the costs of such services are included in an annual tax levy or are collected by rates, charges, fees assessments or other charges. The foregoing requirements shall not apply to a regional local government unit, provided that each city, town commission, board, or other instrumentality which is a member or other service recipient thereof shall adopt a pricing system satisfying the foregoing requirements or such member or other service recipient shall be ineligible to receive its allocable share of any financial assistance provided the regional local governmental unit under M.G.L. c. 21, s. 29C or 33E.

18: Financial Capability Classification System

(1) Notwithstanding the provisions of 310 CMR 41.24, 41.33, 41.43 and 41.53, subject to the availability of funds, the Department may approve additional financial assistance to local government units for eligible costs of water pollution abatement projects in accordance with the financial capability classification system provided in this section and in 310 CMR 41.03(3). Additional financial assistance shall be in the form of lower interest rates on

loans from the Trust or a zero rate of interest on such Loans or supplemental grants awarded by the Department pursuant to M.G.L. c. 21, s. 33E.

(a) Except as provided in 310 CMR 41.03(3), applications for financial assistance for water pollution abatement projects shall be classified by the Department on the basis of financial capability by using the following formula to determine the subsidy point value of the applicant's project:

$$SPV = 0.9(F) + 0.1(E)$$

Where SPV = Subsidy Point Value
F = Financial Points
E = Environmental Points

(b) Financial points shall be determined on the basis of a Financial Capability Quotient determined for each applicant from the percentage obtained by dividing the annual costs per household, as determined by the Department on the basis of information furnished by the applicant, by per capita income. Financial points shall be awarded on the following criteria:

<u>Financial Capability Quotient</u>	<u>Financial Points</u>
Less than 2.0%	1
2.0% to 2.99%	2
3.0% to 3.99%	3
4.0% and over	4

(c) Environmental points shall be determined on the basis of an Environmental Priority Quotient determined for the applicant's project from the percentage obtained by dividing the priority points for the applicant's project, as determined in accordance with 310 CMR 41.22, 41.32, 41.42 or 41.52, by the maximum number of points that may be awarded a project under the applicable provisions of such sections. Environmental points shall be awarded on the following criteria:

<u>Environmental Priority Quotient</u>	<u>Environmental Points</u>
Less than 45%	1
45% to 54.99%	2
55% to 64.99%	3
65% and over	4

(2) Except as provided in 310 CMR 41.03(3) the Department may certify to the Trust approvals of financial assistance, expressed as grant equivalency of eligible costs of the project, in accordance with the following table:

Type of Project	Subsidy Point Value	Grant Equivalency (Not to exceed)
A. Tier I/Title VI	0.00 - 1.30	45% (base level)
Tier I Planning & Design	1.31 - 2.00	55
Infiltration/Inflow	2.01 - 3.00	65
	3.01 - 4.00	75
B. Tier II	0.00 - 1.30	35% (base level)
	1.31 - 2.00	50
	2.01 - 3.00	60
	3.01 - 4.00	70
C. Collection Systems	0.00 - 1.30	25% (base level)
	1.31 - 2.00	35
	2.01 - 3.00	45
	3.01 - 4.00	50

Financial assistance awarded for a project shall not be less than the base level subsidy applicable for the type of project. Financial assistance provided in excess of the base level subsidy (but no higher than levels indicated above) shall be made available at the highest overall level, which, in the best judgement of the Department, is consistent with target maximum figures for the programs established annually by the Department in consultation with the Secretary of Administration and Finance.

(3) If an applicant is a regional local governmental unit, the Department shall first determine separately the subsidy point value for each local government unit, or part thereof, which is a member or other service recipient of such regional local governmental unit. The subsidy point value of the applicant's project shall be the weighted average of the subsidy point values determined for each such local government unit, based upon the number of serviced households of each local government unit as determined by the Department. Financial assistance provided to a regional local governmental unit in accordance with 310 CMR 41.18 shall be allocated to each local government unit which is a member or other service recipient thereof in a manner consistent with the determined subsidy point value attributable to each such local government unit.

41.19: Water Resources and Wastewater Planning Requirements

Prior to receiving financial assistance for a construction project a local government unit must demonstrate that the project is consistent with existing state, regional and local water resource and wastewater planning requirements including but not limited to (1) river basin water quality management plans pursuant to the Clean Water Act s.303(e); (2) nonpoint source management plans pursuant to the Clean Water Act s.319; (3) estuaries management plans pursuant to the Clean Water Act s.320; (4) local water resource management plans pursuant to regulations of the water resources commission and (5) water emergency planning pursuant to M.G.L. c. 21G. The local government unit shall certify that land use regulations, zoning, and other controls in place are consistent with the wastewater system service populations projected in the applicant's facilities plan. Said certification shall list or otherwise identify the controls in place upon which it is based.

41.20: TIER I and TITLE VI PROJECTS

310 CMR 41.20 through 41.29 contain supplemental requirements governing applicants and projects for which financial assistance is sought pursuant to Title VI and for Tier I abatement facilities.

41.21: General

Financial assistance for the costs of water pollution abatement projects shall be awarded to local government units on the basis of the annual state priority list. Local government units eligible for inclusion on the priority list shall be those local government units with projects eligible to be funded with federal Title VI or state only funds that are ready to proceed during the particular fiscal year.

41.22: Priority List

(1) The following criteria shall be used to determine a project's numerical rank on the annual state priority lists:

CRITERIA FOR RANKING TIER I/TITLE VI PROJECTS

<u>A. Type of Project</u>	<u>Points</u>
1. Advanced wastewater treatment project required to meet water quality standards in areas where secondary treatment technology is not sufficient (water quality limited segments).	100

CRITERIA FOR RANKING TIER I/TITLE VI PROJECTS (continued)

A. <u>Type of Project</u>	<u>Points</u>		
2. Wastewater treatment projects where secondary treatment is required (effluent limited segments) or primary treatment projects where secondary treatment waivers have been obtained.	95		
3. Projects that utilize alternatives to conventional wastewater treatment plants.	95		
4. Outfall sewers, major intercepting sewers, major pumping stations, and force mains (If constructed in conjunction with or in place of a wastewater treatment plant, these projects will have the same priority ranking as the treatment plant).	90		
5. Projects for the correction of combined sewer overflows.	80		
B. <u>Effects on Uses</u>	<u>Slight</u>	<u>Moderate</u>	<u>Great</u>
1. The project will improve or protect a fresh-water drinking water supply.	10	20	30
2. The discharge is presently causing health hazard or nuisance.	10	20	30
3. The project will have beneficial effect upon fish and aquatic life.	5	10	15
4. The project will have beneficial effect upon recreation.	5	10	15
5. The project will improve or protect an industrial water supply.	5	10	15
6. The local governmental unit has land use controls in place to protect public drinking water supplies; wetlands; and floodplains.	5	10	15
7. Existing Population Served. greater than 100,000 50-100,000 less than 50,000	10	20	30
8. The local government unit has accepted and complied with the provisions of St. 1985 c. 275.			10
9. The local government unit is under state administrative order, court order, or consent decree to perform the project; provided that the order or decree was not entered as a result of unreasonable or willful dilatory conduct by the local government unit.			10

41.22: continued

(2) Using the Priority Listing and other information, the Department will prepare an intended use plan. This plan will identify which projects will receive assistance from Title VI funds in the year, subject to the availability of funds and compliance with other applicable requirements. In formulating the intended use plan the Department shall ensure that first use funds are used to meet the enforceable requirements of the Clean Water Act. To the extent that the Department plans to fund projects or activities which are not required to meet the enforceable requirements of the Clean Water Act it shall certify that projects identified on the National Municipal Priority List are:

- o In compliance, or
- o or an enforceable schedule, or
- o have an enforcement action filed, or
- o have a funding commitment during or prior to the first year covered by the intended use plan.

In developing the intended use plan the Department shall further ensure that a sufficient number of projects are included which will be equivalency projects, such that the dollar volume of equivalency projects equal or exceeds one hundred percent (100%) of the Federal Capitalization Grant for that fiscal year. The loan volume of equivalency projects in excess of the capitalization grant shall be credited to the equivalency requirements of future years. Such equivalency projects shall be limited to eligible projects as defined in 310 CMR 41.23.

41.23: Eligible Projects

(1) Projects being funded through the use of Title VI funds shall be for construction and related activities and shall fit into at least one of the following categories:

- (a) Secondary treatment or any cost-effective alternative;
- (b) Treatment more stringent than secondary or any cost-effective alternative;
- (c) New interceptors and appurtenances; and
- (d) Infiltration/inflow correction.

(2) Up to 20 percent (as determined by the Governor) of the State's annual allotment may be used for categories of need other than those listed in 310 CMR 41.23(1).

(3) Tier I projects being funded with only state funds shall be for planning, design, construction and related activities and shall fit into at least one of the following categories:

- (a) Secondary treatment or cost-effective alternative;
- (b) Treatment more stringent than secondary or any cost effective alternative;
- (c) Infiltration/inflow correction;
- (d) Major sewer system rehabilitation;
- (e) New interceptors and appurtenances;
- (f) Correction of combined sewer overflows.

41.24: Award of Financial Assistance

(1) Subject to the availability of funds, the Department may certify to the Trust applications for the costs of water pollution abatement projects to local government units. Financial assistance awarded by the Trust shall not exceed, except as provided in 310 CMR 41.03 and 41.18, a forty-five percent (45%) grant equivalency of the eligible costs as determined by the Department. In no case shall a local government unit receive as a result of authorizations for any fiscal year, assistance which is more than 50% of the total assistance contained on the fundable priority list for said fiscal year for the construction of water pollution abatement facilities. In no case shall a local government unit receive as a result of authorization for any fiscal year assistance which is more than 25% of the total assistance contained on the fundable priority list for said fiscal year for the planning or design of abatement facilities, unless all other applicants for planning and design loans shall receive such loans.

41.24: continued

(2) Subject to the availability of funds the Commissioner may approve an increase in the amount of the assistance for construction if warranted. The amount of any increase granted under this section shall, except as provided in 310 CMR 41.18, be limited to a forty-five percent (45%) grant equivalency of the increased eligible costs.

41.25: Application Procedures

A local government unit whose project is on the fundable list may apply to the Department for assistance by completing and filing the required documentation which shall include at a minimum a completed state application on a form established by the Department, evidence of availability and appropriation of sufficient funds for the project and such additional financial information as may be required by the Trust, authority to file, certification of authority to file the application, and:

- For planning projects, an approved scope of work.
- For design projects, an approved completed facilities plan.
- For Construction projects, approved plans and specifications.

The Department shall review each application submitted to determine the adequacy, accuracy and completeness of the information contained therein. The Department may require the applicant to provide additional information and to attend informal conferences relative to any application.

41.26: Allowable Costs

Costs which are determined by the Deputy Commissioner to be necessary for the construction of water pollution abatement projects are allowable. Such costs may include but not be limited to:

(1) Costs Related to Subagreements

- (a) The costs of professional and consulting services;
- (b) the costs of facilities planning directly related to the treatment facilities;
- (c) the costs of sewer system evaluation;
- (d) the costs of project feasibility and engineering reports;
- (e) costs incurred in complying with the requirements of the National Environmental Policy Act and the Massachusetts Environmental Policy Act;
- (f) the costs for preparation of construction drawings, specifications, estimates, and construction contract documents; including survey and borings;
- (g) the costs of technical services for development of a municipal pretreatment program, user charge system, sewer use ordinance, or intermunicipal agreement;
- (h) the costs of subagreements for building the project;
- (i) the costs for establishing or using minority and women business liaison services;
- (j) the costs of services incurred during the building of a project to ensure that it is built in conformance with the approved design drawings and specifications;
- (k) the costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement provided:
 - 1. The claim arises from work within the scope of the project;
 - 2. A formal amendment to the loan agreement is executed specifically covering the costs before they are incurred;
 - 3. The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the awardee; and
 - 4. The Deputy Commissioner determines that there is a significant state interest in the issues involved in the claim.
- (l) Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:
 - 1. Change orders and the costs of meritorious contractor claims provided the costs are:
 - Within the scope of the project;
 - Not caused by the recipient's mismanagement; and

41.26: continued

- Not caused by the recipient's vicarious liability for the improper actions of others.
 - 2. Provided the requirements of 310 CMR 41.26(1)(l)1. are met, the change orders and contractor claim costs include:
 - a. Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects;
 - b. Costs of equitable adjustments for differing site conditions.
 - 3. Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the Department and shall be allowable only to the extent that they meet the requirements 310 CMR 41.26(1)(l)1., are reasonable, and do not attempt to pass on to the state the cost of events that were the responsibility of the recipient, the contractor, or others.
 - (m) The cost of development of an operation and maintenance manual for wastewater treatment plants and major pumping stations.
 - (n) Start-up services for on-site training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.
 - (o) The cost for technical services during post construction certification including preparation of a certification report.
- (2) Costs Related to Mitigation
- (a) Costs necessary to mitigate direct, adverse, physical impacts resulting from building treatment works.
 - (b) The costs of site screening necessary to comply with facilities planning, Massachusetts Environmental Policy Act (MEPA) and National Environmental Policy Act (NEPA) requirements, or necessary to screen adjacent properties.
 - (c) The costs of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.
- (3) Cost Related to Real Property
- (a) The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residuals resulting from such treatment, if specifically approved by the Commissioner in the project certification. These costs include:
 - 1. The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;
 - 2. The cost of land acquired for a soil absorption system for a group of two or more homes;
 - 3. The cost of land acquired for composting or temporary storage of compost residuals which result from wastewater treatment;
 - 4. The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.
 - 5. The cost of land appraisals where the Department approves the associated scope and level of effort in advance.
 - (b) The cost associated with the preparation of the treatment works site before, during and, to the extent agreed on in the loan agreement, after building. The costs include:
 - 1. The cost of demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition;
 - 2. The cost of removal, relocation or replacement of utilities, if the recipient is legally obligated to pay such costs under state or federal law; and

3. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and will generally be limited to those costs to repave the width of trench.
- (c) The cost of acquiring all or part of an existing publicly or privately owned wastewater treatment works provided all the following criteria are met.
 1. The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;
 2. The acquired treatment works was not built with previous federal or state financial assistance;
 3. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and
 4. The acquisition does not circumvent the requirements of these regulations, or other state or local requirements.
- (4) Costs Related to Equipment, Materials and Supplies
 - (a) The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.
 - (b) The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation.
 - (c) The cost of shop equipment installed at the treatment works necessary for the operation of the works.
 - (d) The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.
 - (e) A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded through grants or loans. The calculation shall be based on:
 1. The portion of the total collection system paid for by grants, or loans;
 2. A demonstrable frequency of need; and
 3. The need for the equipment to preclude the discharge or bypassing of untreated wastewater.
 - (f) The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or residuals, or for the maintenance of equipment. These items include:
 1. Portable stand-by generators;
 2. Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and
 3. Vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.
 - (g) Replacement parts identified and approved in advance by the Department as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:
 1. Not immediately available and/or whose procurement involves an extended "lead-time";
 2. Identified as critical by the equipment supplier(s); or
 3. Critical but not included in the inventory provided by the equipment supplier(s).
 - (h) Computers and ancillary software identified and approved in advance by the Department as necessary to assure efficient operation of the treatment facility.
- (5) Miscellaneous Costs
 - (a) The costs of salaries, benefits and expendable materials the recipient incurs for the project.
 - (b) Unless otherwise specified in 310 CMR 41.20 through 41.29, the costs of meeting specific state statutory procedures.

41.26: continued

- (c) Costs for necessary travel directly related to accomplishment of project objectives.
- (d) Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Deputy Commissioner.
- (e) Costs allocable to the water pollution control purpose of multiple purpose projects.
- (f) Costs of recipient employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works, if approved in advance by the Department.
- (g) Costs of force account work subject to the following conditions:
 - 1. A recipient must secure the Department's prior written approval for use of the force account method for any work.
 - 2. The Department's approval shall be based on the recipient's demonstration that it possesses the necessary competence required to accomplish, document, and audit such work, and that the work can be accomplished more economically by the use of the force account method.
 - c. Use of the force account method for construction shall generally be limited to minor portions (less than \$25,000) of a project.
- (h) The administrative cost of complying with the provisions of 310 CMR 41.14.

41.27: Unallowable Costs

Cost which are determined by the Deputy Commissioner to be unnecessary for the construction of the water pollution abatement project are unallowable. Such costs shall include but not be limited to:

(1) Costs Related to Subagreements

- (a) Except as provided in paragraph 310 CMR 41.26(1)(i), architectural or engineering services or other services necessary to correct defects in a facilities plan, design drawings and specifications, or other subagreement documents.
- (b) The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:
 - 1. The claim arises from work within the scope of the loan agreement;
 - 2. A formal amendment to the loan agreement is executed specifically covering the costs before they are incurred;
 - 3. The claim cannot be settled without arbitration or litigation;
 - 4. The claim does not result from the recipient's mismanagement;
 - 5. The Deputy Commissioner determines that there is a significant interest in the issues involved in the claim; and
 - 6. In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.
- (c) Bonus payments, not legally required, for completion of building before a contractual completion date.
- (d) Costs of basin or areawide planning which is not directly related to the project.

(2) Costs Related to Mitigation

- (a) The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives.

(3) Costs Related to Real Property

- (a) The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and residual disposal areas except as provided in 310 CMR 41.26,(3)(a).
- (b) Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of

negotiation or any condemnation proceeding, as determined by the Deputy Commissioner.

(c) Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

(d) The pro-rata portion of the costs for utilities which cannot be dedicated for the sole purpose of the water pollution abatement project.

(4) Costs Related to Equipment, Materials and Supplies

(a) The costs of equipment or material procured in violation of applicable federal, state, or local laws.

(b) The cost of furnishings including draperies, furniture and office equipment.

(c) The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers.

(d) The cost of vehicles for the transportation of the recipient's employees.

(e) Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

(5) Miscellaneous Costs

(a) Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.

(b) Preparation of applications, plans of study, and permits required by federal, state or local regulations or procedures.

(c) Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government.

(d) Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project.

(e) Personal injury compensation, claims related to wrongful deaths, or property damages arising out of the project.

(f) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures.

(g) Costs outside the scope of the approved project.

(h) Costs for which payment has been or will be received from another federal or state agency.

(i) The cost of treatment works that would provide capacity for new habitation or other establishments to be located in environmentally sensitive land such as wetlands or floodplains.

41.28: Facilities Planning

(1) General. Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Clean Water Act. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, it will demonstrate that, except for alternative technology, the selected alternative is cost effective (i.e., is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations). The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints and consistent with the requirements of 310 CMR 41.19.

(2) Facilities plan contents. A completed facilities plan must include:

(a) A description of both the proposed treatment works, and the complete wastewater treatment system of which it is a part.

(b) A description of the Best Practicable Wastewater Treatment Technology.

(c) A cost-effective analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health

41.28: continued

requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for the cost-effective analysis shall be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The discount rate established by the U.S. Environmental Protection Agency shall be used in the cost-effective analysis. The population forecasting in the analysis shall be consistent with the current state implementation plan for air quality. A cost-effective analysis must include:

1. An evaluation of alternative flow reduction methods. (If the applicant demonstrates that the existing average daily base flow (ADBFB) from the area is less than 70 gallons per capita per day (gpcd), or if the Deputy Commissioner determines the area has an effective existing flow reduction program, additional flow reduction evaluation is not required.)
 2. A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected and planned for after the treatment works become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;
 3. An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;
 4. An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and residuals material resulting from the treatment process;
 5. A consideration of systems with revenue generating applications;
 6. An evaluation of opportunities to reduce use of, or recover energy;
 7. Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential, commercial, institutional, and industrial users.
- (d) A demonstration of the non-existence or possible existence of excessive infiltration/inflow in the sewer system.
- (e) An analysis of the potential open space and recreation opportunities associated with the project.
- (f) An evaluation of the environmental impacts of alternatives to meet the requirements of MEPA. Copies of the Environmental Notification Form filed in compliance with MEPA shall be submitted to the following additional agencies: U.S. Army Corps of Engineers; Federal Emergency Management Agency; U.S. Fish and Wildlife Service; U.S. Environmental Protection Agency Region 1; and if the Department determines applicable, the U.S. Department of Interior - Park Service and the National Marine Fisheries Service or other federal agencies that may have an interest. The submission shall include a cover letter (copies should be sent to the Department) requesting that agencies file their comments with the Department as well as with the applicant and MEPA.
- (g) An evaluation of the water supply implications of the project.
- (h) For the selected alternative, a concise description at an appropriate level of detail, of at least the following:
1. Relevant design parameters;
 2. Estimated capital construction and operation and maintenance costs, (identifying possible federal, state and local shares), and a description of the manner in which local costs will be financed;
 3. Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;
 4. Cost impacts on wastewater system users and non-users; and
 5. Institutional and management arrangements necessary for successful implementation.
- (i) A public participation program that includes as a minimum one public meeting to discuss the alternatives and their environmental impact and a public hearing on the recommended plan including its environmental impact.

41.29: Miscellaneous Requirements

Projects which receive financial assistance pursuant to 310 CMR 41.20 must meet the following additional requirements:

(1) Infiltration/Inflow: the local government unit shall demonstrate to the Deputy Commissioner's satisfaction that each sewer system discharging into a proposed water pollution abatement project is not or will not be subject to excessive infiltration/inflow. For combined sewers, inflow is not considered excessive in any event.

(2) Project Performance.

(a) The local governmental unit shall notify the Deputy Commissioner in writing of the actual date of initiation of operation.

(b) Subject to the provisions of state law, the local governmental unit shall select the engineer or engineering firm principally responsible for either supervising construction or providing architectural and engineering services during construction as the prime engineer to provide the following services during the first year following the initiation of operation:

1. Direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

2. Train or provide for training of operating personnel and prepare curricula and training material for operating personnel; and

3. Advise the local governmental unit whether the project is meeting the project performance standards.

4. On the date one year after the initiation of operation of the project, the local governmental unit shall certify to the Deputy Commissioner whether the project meets the project performance standards. If the Deputy Commissioner concludes that the project does not meet the project performance standards, the recipient shall submit the following:

a. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards (including the quantity of infiltration/inflow proposed to be eliminated), and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance.

b. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

c. The scheduled date for certifying to the Deputy Commissioner that the project is meeting the project performance standards.

5. The local governmental unit shall take corrective action necessary to bring a project into compliance with the project performance standards at its own expense.

6. Nothing in this section:

a. Prohibits a local governmental unit from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or

b. Affects the Department's right to take remedial action, including enforcement, against a local governmental unit that fails to carry out its obligations.

(3) Value Engineering: If the proposed water pollution abatement project has not received financial assistance for design or prior approval for design prior to the effective date of these regulations, the local government unit shall conduct value engineering if the estimated cost exceeds \$10 million for construction of the project.

(4) Wage Rates: Wages paid for the construction of water pollution abatement projects funded with Title VI funds must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (40 U.S.C. 276).

41.30: TIER II PROJECTS

310 CMR 41.30 through 41.36 contain supplemental requirements governing applicants and projects for which financial assistance is sought for Tier II projects. Tier II projects include wastewater pollution abatement projects for:

41.30: continued

the correction of combined sewer overflows; facilities in smaller communities; upgrades or additions to facilities that previously received grants; and facilities which did not receive high enough priority for assistance under 310 CMR 41.20.

41.31: General

Financial assistance for the costs of water pollution abatement projects shall be awarded to local government units on the basis of the annual state fundable priority list. Local government units eligible for inclusion on the priority list shall be those local government units with eligible projects that are ready to proceed during the particular fiscal year.

41.32: Priority List

The following criteria shall be used to determine a project's numerical rank on the annual state priority list:

CRITERIA FOR RANKING TIER II PROJECTS

A. <u>Type of Project</u>	<u>Points</u>		
1. Projects for the correction of combined sewer overflows.	100		
2. Advanced wastewater treatment project required to meet water quality standards in areas where secondary treatment technology is not sufficient (water quality limited segments),	90		
3. Wastewater treatment projects where secondary treatment is required (effluent limited segments) or primary treatment projects where secondary treatment waivers have been obtained.	85		
4. Projects that utilize alternatives to conventional wastewater treatment plants.	85		
5. Outfall sewers, major intercepting sewers, major pumping stations, and force mains (If constructed in conjunction with a wastewater treatment plant, these projects will have the same priority ranking as the treatment plant).	80		
B. <u>Effects on Uses</u>	<u>Slight</u>	<u>Moderate</u>	<u>Great</u>
1. The project will improve or protect a fresh-water drinking water supply.	10	20	30
2. The discharge is presently causing health hazard or nuisance.	10	20	30
3. The project will have beneficial effect upon fish and aquatic life.	5	10	15

<u>B. Effects on Uses</u>	<u>Slight</u>	<u>Moderate</u>	<u>Great</u>
4. The project will have beneficial effect upon recreation.	5	10	15
5. The project will improve or protect an industrial water supply.	5	10	15
6. The local government unit has land use controls in place to protect public drinking water supplies; wetlands; and floodplains.	5	10	15
7. The existing population served is less than 50,000			10
8. The public entity has accepted and complied with the provisions of St. 1985, c. 275.			10
9. The public entity is under state administrative order, court order, or consent decree to perform the project; provided that the order or decree was not entered as a result of unreasonable or willful dilatory conduct by the public entity.			10

41.33: Award of Financial Assistance

(1) Subject to the availability of funds, the Department may certify to the trust applications for the costs of water pollution abatement projects to local government units. Financial assistance awarded by the Trust shall not exceed, except as provided in 310 CMR 41.03 and 41.18, a thirty-five percent (35%) grant equivalency of the eligible costs as determined by the Department. In no case shall a local government unit receive as a result of authorizations for any fiscal year, assistance which is more than 25% of the total assistance contained on the fundable priority list for said fiscal year.

(2) Subject to the availability of funds the Commissioner may approve an increase in the amount of the assistance for construction if warranted. The amount of any increase granted under this section shall, except as provided in 310 CMR 41.18 be limited to a thirty-five percent (35%) grant equivalency of the increased eligible costs.

41.34: Application Procedures

A local government unit whose project appears on the fundable list may apply to the Department for assistance by completing and filing the required documentation which shall include at a minimum a completed application on a form established by the Department, evidence of availability and appropriation of sufficient funds for the project and such additional financial information as may be required by the Trust, authority to file and certification of authority to file the application, and plans and specifications.

The Department shall review each application submitted to determine the adequacy, accuracy and completeness of the information contained therein. A facilities plan and final design plans and specifications for the project and user charge system as approved by the Department shall be deemed a part of the application and incorporated therein by reference. The Department may require the applicant to provide additional information and to attend informal conferences relative to any application.

41.35: Allowable Costs

Costs which are determined by the Deputy Commissioner to be necessary for the construction of water pollution abatement projects are allowable. Such costs shall include but not be limited to:

(1) Costs Related to Subagreements

- (a) The costs of subagreements for building the project.
- (b) The costs for establishing or using minority and women business liaison services.
- (c) The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications.
- (d) The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement provided:
 - 1. The claim arises from work within the scope of the project;
 - 2. A formal amendment to the loan agreement is executed specifically covering the costs before they are incurred;
 - 3. The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the recipient; and
 - 4. The Deputy Commissioner determines that there is a significant state interest in the issues involved in the claim.
- (e) Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:
 - 1. Change orders and the costs of meritorious contractor claims provided the costs are:
 - a. Within the scope of the project;
 - b. Not caused by the recipient's mismanagement; and
 - c. Not caused by the recipient's vicarious liability for the improper actions of others.
 - 2. Provided the requirements of 310 CMR 41.35(1)(e)1. are met, the allowable change orders and contractor claim costs include:
 - a. Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects;
 - b. Costs of equitable adjustments for differing site conditions.
 - 3. Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the Department and shall be allowable only to the extent that they meet the requirements of 310 CMR 41.35(1)(e)1., are reasonable, and do not attempt to pass on to the state the cost of events that were the responsibility of the recipient, the contractor, or others.
- (f) The cost of development of an operation and maintenance manual for wastewater treatment plants and major pumping stations.
- (g) Start-up services for on-site training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.
- (h) The cost for technical services during post construction certification including preparation of a certification report.

(2) Costs Related to Mitigation

- (a) Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works.
- (b) The costs of site screening necessary to comply with facilities planning, MEPA requirements, or necessary to screen adjacent properties.
- (c) The costs of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.

(3) Costs Related to Real Property

- (a) The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate

disposal of residuals resulting from such treatment, if specifically approved by the Commissioner in the project certification. These costs include:

1. The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;
2. The cost of land acquired for a soil absorption system for a group of two or more homes;
3. The cost of land acquired for composting or temporary storage of compost residuals which result from wastewater treatment;
4. The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

(b) The cost associated with the preparation of the treatment works site before, during and, to the extent agreed on in the loan agreement, after building. The costs include:

1. The cost of demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition;
2. The cost of removal, relocation or replacement of utilities, if the recipient is legally obligated to pay such costs under state or federal law; and
3. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and will generally be limited to repaving the width of trench.

(c) The cost of acquiring all or part of an existing publicly or privately owned wastewater treatment works provided all the following criteria are met:

1. The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;
2. The acquired treatment works was not built with previous federal or state financial assistance;
3. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and
4. The acquisition does not circumvent the requirements of these regulations, or other state or local requirements.

(4) Cost Related to Equipment, Materials and Supplies

(a) The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

(b) The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation.

(c) The cost of shop equipment installed at the treatment works necessary for the operation of the works.

(d) The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.

(e) A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded through grants or loans. The calculation shall be based on:

1. The portion of the total collection system paid for by grants, or loans;
2. A demonstrable frequency of need; and
3. The need for the equipment to preclude the discharge or bypassing of untreated wastewater.

(f) The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or residuals, or for the maintenance of equipment. These items include:

1. Portable stand-by generators;

41.35: continued

2. Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and
 3. Vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.
- (g) Replacement parts identified and approved in advance by the Deputy Commissioner as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:
1. Not immediately available and/or whose procurement involves an extended "lead-time";
 2. Identified as critical by the equipment supplier(s); or
 3. Critical but not included in the inventory provided by the equipment supplier(s).
- (5) Miscellaneous Costs
- (a) The costs of salaries, benefits and expendable materials the recipient incurs for the project.
 - (b) Unless otherwise specified in 310 CMR 41.30 through 41.39, the costs of meeting specific state statutory procedures.
 - (c) Costs for necessary travel directly related to accomplishment of project objectives.
 - (d) Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Deputy Commissioner.
 - (e) Costs allocable to the water pollution control purpose of multiple purpose projects.
 - (f) Costs of recipient employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works, if approved in advance by the Department.
 - (g) The costs of force account work subject to the following conditions:
 1. A recipient must secure the Department's prior written approval for use of the force account method for any work.
 2. The Department's approval shall be based on the recipient's demonstration that it possesses the necessary competence required to accomplish, document, and audit such work, and that the work can be accomplished more economically by the use of the force account method.
 3. Use of the force account method for construction shall generally be limited to minor portions (less than \$25,000) of a project.
 - (h) The administrative costs of complying with the provisions of 310 CMR 41.14.

41.36: Unallowable Costs

Cost which are determined by the Deputy Commissioner to be unnecessary for the construction of the water pollution abatement project are unallowable. Such costs shall include but not be limited to:

- (1) Costs Related to Subagreements
 - (a) Except as provided in 310 CMR 41.35(1)(e), architectural or engineering services or other services necessary to correct defects in a facilities plan, design drawings and specifications, or other subagreement documents.
 - (b) The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:
 1. The claim arises from work within the scope of the loan agreement;
 2. A formal amendment to the loan agreement is executed specifically covering the costs before they are incurred;
 3. The claim cannot be settled without arbitration or litigation;
 4. The claim does not result from the recipient's mismanagement;
 5. The Deputy Commissioner determines that there is a significant interest in the issues involved in the claim; and

6. In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.

(c) Bonus payments, not legally required, for completion of building before a contractual completion date.

(2) Costs Related to Mitigation

(a) The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives.

(3) Costs Related to Real Property

(a) The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and residual disposal areas except as provided in 310 CMR 41.35(3)(a).

(b) Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of negotiation or any condemnation proceeding, as determined by the Deputy Commissioner.

(c) Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

(d) The pro-rata portion of the costs for utilities which cannot be dedicated for the sole purpose of the water pollution abatement project.

(4) Costs Related to Equipment, Materials and Supplies:

(a) The costs of equipment or material procured in violation of applicable federal, state, or local laws.

(b) The cost of furnishings including draperies, furniture and office equipment.

(c) The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers.

(d) The cost of vehicles for the transportation of the recipients employees.

(e) Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

(5) Miscellaneous Costs

(a) Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.

(b) Preparation of applications and permits required by federal, state or local regulations or procedures.

(c) Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government.

(d) Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project.

(e) Personal injury compensation, claims related to wrongful deaths, or property damages arising out of the project.

(f) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures.

(g) Costs outside the scope of the approved project.

(h) Costs for which payment has been or will be received from another federal or state agency.

(i) Costs of treatment works for control of pollutant discharges from a separate storm sewer system.

(j) The cost of treatment works that would provide capacity for new habitation or other establishments to be located in environmentally sensitive land such as wetlands or floodplains.

(41.37 through 41.39 Reserved)

41.40: INFILTRATION/INFLOW PROJECTS

310 CMR 41.40 through 41.46 contain supplemental requirements governing applicants and projects for which financial assistance is sought for the planning, design, and construction of Infiltration/Inflow removal.

41.41: General

Financial assistance for infiltration/inflow rehabilitation shall be awarded to local governmental units on the basis of the annual state priority list.

41.42: Priority List

The Commissioner shall rate and rank each project proposed for inclusion on the annual Priority List using the criteria in the following subsection.

CRITERIA FOR RATING INFILTRATION/INFLOW PROJECTS.

A. <u>Type of Project</u>	<u>Points</u>		
1. The rehabilitation will correct inflow problems and will restore significant wastewater handling capacity or will significantly affect the construction or operating costs of abatement facilities; or	100		
2. The rehabilitation of infiltration/inflow problems is needed to maintain the effective operation, design life, or NPDES permit requirements of an existing or proposed wastewater treatment plant; or	75		
3. The project is value-effective or cost-effective	50		
B. <u>Effects on Uses</u>	<u>Slight</u>	<u>Moderate</u>	<u>Great</u>
1. The project will improve or protect a fresh-water drinking water supply.	10	20	30
2. The discharge is presently causing a health hazard or nuisance.	10	20	30
3. The project will have a beneficial effect upon fish and aquatic life.	5	10	15
4. The project will have a beneficial effect upon recreation.	5	10	15
C. <u>Performance</u>			
1. The public entity is under state administrative order, court order, or consent decree to perform the project; provided that the order or decree was not entered as a result of unreasonable or willful dilatory conduct by the public entity.	10		

C. <u>Performance</u> (con't)	<u>Slight</u>	<u>Moderate</u>	<u>Great</u>
2. The public entity has a collection system operation and maintenance program approved by the Department.			20
3. The public entity has accepted and complied with the provisions of Chapter 275 of the Acts of 1985.			10

41.43: Award of Financial Assistance

(1) Subject to the availability of funds, the Department may certify to the Trust applications for financial assistance for infiltration/inflow rehabilitation to local governmental units. Financial assistance awarded by the Trust shall not, except as provided in 310 CMR 41.03 and 41.18, exceed a forty-five percent (45%) grant equivalency of the eligible costs as determined by the Department. In no case shall a local government unit receive as a result of authorization for any fiscal year, assistance which is more than 25% of the total assistance contained on the fundable priority list for said fiscal year for the correction of Infiltration/Inflow. Assistance approved by the Department shall be for the purpose of determining, removing, and assuring elimination of infiltration or inflow that is cost-effective or value-effective to remove and may be for any or all of the following:

- (a) Infiltration/Inflow Analysis, sewer system evaluation survey and activities incidental thereto (Step 1);
- (b) Preparation of plans and specifications and public bidding documents and materials and activities incidental thereto (Step 2);
- (c) Alteration, remodeling or improvement and activities incidental thereto (Step 3).

(2) Subject to the availability of funds the Commissioner may approve an increase in the amount of the award if warranted. The amount of any increase awarded under this section shall, except as provided in 310 CMR 41.18, be limited to a forty-five percent (45%) grant equivalency of the increased eligible costs.

41.44: Application Procedure

A local governmental unit may apply to the Department for assistance for rehabilitation of infiltration/inflow by completing and filing the required documentation which shall include at a minimum a completed application on a form established by the Department, evidence of availability and appropriation of sufficient funds for the project and such additional financial information as may be required by the Trust, authority to file and certification of authority to file the application and:

- o For I/I analyses and sewer system evaluation surveys, an approved scope of work.
- o For design, an approved infiltration/inflow analysis and sewer system evaluation survey.
- o For construction, approved plans and specifications and an approvable collection system operation and maintenance program.

The Department shall review each application submitted to determine the adequacy, accuracy and completeness of the information contained therein. The Department may require the applicant to provide additional information and to attend informal conferences relative to any application.

41.45: Allowable Costs

Costs which are necessary for the effective removal of infiltration and inflow from wastewater treatment facilities are allowable. Such costs shall include but not be limited to:

41.45: continued

- (1) Infiltration/Inflow studies.
- (2) Sewer system evaluation surveys.
- (3) Preparation of plans and specifications for eligible rehabilitation projects.
- (4) Sewer rehabilitation measures within public ways including but not limited to:
 - (a) Joint testing and sealing;
 - (b) Manhole sealing;
 - (c) Manhole cover raising and cover and frame replacement to prevent inflow;
 - (d) Service lateral repair and replacement;
 - (e) Pipe and manhole replacement and lining;
 - (f) The costs of services incurred during the rehabilitation to ensure that the work was accomplished in accordance with the design drawings and specifications.
- (5) Purchase and installation of equipment for permanent monitoring of flow in sewer systems.
- (6) Studies and investigations on private property to determine sources of infiltration and inflow.
- (7) Work related to storm drainage systems where it is demonstrated that the work is essential to the permanent removal of inflow.
- (8) Combined sewer separation in separate sewer systems.
- (9) Development of an operation and maintenance manual which shall include, at a minimum, improvements to sewer use ordinances, user charge systems and collection system operation and maintenance programs.
- (10) Force account work subject to the following conditions:
 - (a) A recipient must secure the Department's prior written approval for use of the force account method for any work.
 - (b) The Department's approval shall be based on the recipient's demonstration that he possesses the necessary competence required to accomplish, document, and audit such work, and that the work can be accomplished more economically by the use of the force account method.
 - (c) Use of the force account method for construction will generally be limited to minor portions (less than \$25,000) of a project.
- (11) Post rehabilitation certification.
- (12) The administrative costs of complying with the provisions of 310 CMR 41.14.

41.46: Unallowable Costs

Cost which are unnecessary for infiltration/inflow rehabilitation are unallowable. Such costs shall include but not be limited to:

- (1) Costs of basin or areawide planning which is not directly related to the project;
- (2) Bonus payments to contractors for completion of construction earlier than contracted completion date;
- (3) Personal injury compensation, claims related to wrongful deaths, or property damages arising out of the project, however determined;
- (4) Fines and penalties;
- (5) Costs outside the scope of the approved project;

41.46: continued

- (6) Ordinary operating expenses of local government;
- (7) Costs for which payment has been or will be received under any other state or federal program of assistance;
- (8) Costs of equipment or material procured in violation of state, federal, or other law;
- (9) Costs for the preparation of an application for financial assistance;
- (10) Costs for obtaining permits or licenses;
- (11) Repair, replacement, or installation of service connections on private property;
- (12) The purchase of real property.

(41.47 through 41.49 Reserved)

41.50: COLLECTION SYSTEMS

310 CMR 41.50 through 41.59 contain supplemental requirements governing applicants and projects for which financial assistance is sought for collection systems.

41.51: General

Financial assistance for the construction of collection systems shall be awarded to local government units on the basis of the annual state priority list.

41.52: Priority List

The Commissioner shall rate and rank each project using the following:

CRITERIA FOR RANKING COLLECTION SYSTEM PROJECTS.

<u>A. Type of Project</u>	<u>Points</u>		
1. Construction of the project is interdependent with one or more water pollution abatement projects which received or will receive assistance by the Department;			30
<u>B. Effects on Health</u>	<u>Slight</u>	<u>Moderate</u>	<u>Great</u>
1. The project will improve or protect a fresh-water drinking water supply	10	20	30
2. Discharges from failing septic systems or direct discharges from homes are presently causing a health hazard or nuisance	10	20	30
3. Percent failing septic systems and or direct discharges from homes within the project service area:			
More than 0 but less than 15%	10		
15% - 30%		20	
Greater Than 30%			30

41.52: continued

C. Effects on Environment

- | | | | |
|-----------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| 1. Existing surface water quality violation or degradation problems in project service area to be eliminated by project. | 5 | 10 | 15 |
| 2. Project will have beneficial effects upon recreation. | 5 | 10 | 15 |
| 3. Limitations of soil to subsurface disposal. | 5 | 10 | 15 |
| 4. The local government unit has land use controls in place to protect public drinking water supplies; wetlands; and floodplains. | 5 | 10 | 15 |

D. Population Density

- | | | | |
|----------------------------------------------------------------------|----|----|----|
| 1. Average population per 1000 feet of sewer in project service area | | | |
| 20 to less than 35 | 10 | | |
| 35 to less than 50 | | 20 | |
| 50 or greater | | | 30 |
| 2. Average lot size in project service area | | | |
| 1/2 acre to less than 1 acre | 10 | | |
| 1/4 acre to less than 1/2 acre | | 20 | |
| less than 1/4 acre | | | 30 |

E. Performance

- | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|----|
| 1. The local governmental unit is under state administrative order, court order, or consent decree to perform the project or a Department project interdependent with the project; provided that the order or decree was not entered as a result of unreasonable or willful dilatory conduct by the local governmental unit. | | | 30 |
| 2. The local governmental unit has accepted and complied with the provisions of St. 1985, c. 275. | | | 10 |

- F. Larger replacement of relief sewers and the upgrading of existing associated pumping stations [See 310 CMR 41.55(2)], shall be rated on the criteria contained in 310 CMR 41.52: A., B.1., 2., C.1., 2., 4., E.1., 2.

41.53: Award Of Financial Assistance

(1) Subject to the availability of funds, the Department may certify to the Trust applications for the costs of collection system projects to Local Governmental Units. Financial assistance awarded by the Trust shall not exceed, except as provided in 310 CMR 41.03 and 41.18, a twenty-five percent (25%) grant equivalency of the eligible costs as determined by the Department.

41.53: continued

Financial assistance approved by the Department shall be for the costs of a collection system as defined in 310 CMR 41.12 of these regulations. In no case shall a local government unit receive as a result of authorization for any fiscal year, assistance which is more than 10% of the total assistance contained on the fundable priority list for said fiscal year for collection systems.

(2) Subject to the availability of funds the Commissioner may approve an increase in the amount of the award if warranted. The amount of any increase granted under this section shall, except as provided in 310 CMR 41.18, be limited to a twenty-five percent (25%) grant equivalency of the increased eligible costs.

41.54: Application Procedures

A local governmental unit whose project appears on the fundable list may apply to the Department for assistance for the costs of a collection system project by completing and filing the required application form established by the Department, evidence of availability and appropriation of sufficient funds for the project and such additional financial information as may be required by the Trust, authority to file and certification of authority to file the application, and plans and specifications.

The Department shall review each application submitted to determine the adequacy, accuracy and completeness of the information contained therein. The Department may require the applicant to provide additional information and to attend informal conferences relative to any application.

41.55: Limitation on Eligibility

The scope of eligible projects shall be limited as follows:

- (1) For collection system projects the bulk, generally two thirds, of the expected flow (flow from existing plus projected future habitations) from the collection system will be for waste waters originating from the community (habitation) in existence on November 19, 1979.
- (2) Rehabilitation, enlargement or replacement of an existing pumping station or construction of a new pumping station not associated with or necessary for servicing the collection system to be built as part of the project shall not be an eligible portion of the project.
- (3) Force account work shall be eligible subject to the following conditions:
 - (a) A recipient must secure the Department's prior written approval for use of the force account method for any work.
 - (b) The Department's approval shall be based on the recipient's demonstration that he possesses the necessary competence required to accomplish, document, and audit such work, and that the work can be accomplished more economically by the use of the force account method.
 - (c) Use of the force account method for construction shall generally be limited to minor portions (less than \$25,000) of a project.
- (4) The administrative costs of complying with the provisions of 310 CMR 41.14 shall be eligible.

41.56: Ineligible Costs

Such costs shall include but not be limited to:

- (1) Professional and consulting services;
- (2) Facilities planning, basin or areawide planning, project feasibility or engineering reports, sewer system evaluation work and reports, or any other preliminary planning or engineering;
- (3) Preparation of applications for financial assistance;

41.56: continued

- (4) Preparation of construction drawings, specifications, estimates and construction contract documents;
- (5) Surveying and boring work or reports;
- (6) Site acquisition (e.g. sewer rights-of-way, pumping station sites);
- (7) For unoccupied lots adjacent to the project, costs associated with service connections within the boundary of the public way or easement other than one service connection Y fitting per vacant lot;
- (8) Costs of required engineering inspection (resident engineering) or legal, fiscal, technical or administrative services associated with the project;
- (9) Personal injury compensation, claims related to wrongful deaths, or property damages arising out of the project, whether determined by adjudication, arbitration, negotiation or otherwise;
- (10) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations, or procedures;
- (11) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, etc.;
- (12) Costs of complying with the National Environmental Policy Act, or the Massachusetts Environmental Policy Act and regulations thereunder, or the Massachusetts Historical Commission Regulations;
- (13) Costs for obtaining permits or licenses;
- (14) Costs which are outside the scope of the approved project.
- (15) Costs for approval, preparation, issuance, and sale of bonds or other forms of indebtedness required to finance the project.

(41.57 through 41.59 Reserved))

41.60: ARCHITECTURAL/ENGINEERING SUBAGREEMENTS

310 CMR 41.60 through 41.64 contain the specific requirements for architectural/engineering subagreements where under the provisions of 310 CMR 41.20 through 41.49 the applicant is requesting financial assistance for those costs.

NOTE: the provisions of 310 CMR 41.60 through 41.64 may be subject to revision to insure consistency with the requirements of state law governing municipal procurement of service.

41.61: Cost and Price Considerations

A request for financial assistance for architectural or engineering services shall include a detailed breakdown of cost and price considerations therefor. Such considerations shall include but not necessarily be limited to direct costs by labor category; fringe and direct overhead factors as most recently approved provisionally by the Department; travel; equipment; subcontractors; fee; and certification by the recipient that these considerations have been reviewed and are acceptable.

41.62: Provision for Compensation

Contracts for architectural/engineering or related services shall contain provision for compensation by one of the following methods:

(1) Cost Reimbursement Contracts. Each cost reimbursement contract must clearly establish a cost ceiling which the engineer may not exceed without a formally executed amendment and a fixed dollar fee which may not be increased except by formally executed contract amendment which increase the scope of work.

(2) Fixed Price Contracts. A fixed price contract shall establish a guaranteed maximum price which shall not be increased except by a formally executed contract amendment which increases the scope of work.

(3) Per Diem Contracts. A per diem contract may be used in a limited number of cases for incidental services such as intermittent professional or testing services, with prior approval by the Department.

A per diem contract having total costs which may reasonably be expected to exceed \$10,000 may be used only after the recipient determines that a fixed price or cost reimbursement contract is not appropriate under the circumstances, subject to the Department's approval. Cost and fee included in the per diem rate must be specifically negotiated and displayed categorically in the architect/engineer's proposal. The contract shall establish a price ceiling which may not be exceeded except by formal amendment to the contract.

41.63: Compensation Procedures

If under a cost reimbursement or fixed price contract, the recipient elects to use a multiplier type of compensation, each of the following conditions and limitations shall be applied thereto:

(1) The multiplier and each portion of the multiplier allocable to fee and to overhead shall be categorically negotiated;

(2) The portion of the multiplier allocable to overhead shall include only allowable items of costs as determined by the Department.

(3) The parts of the multiplier which are specifically allocable to fee and to overhead shall be categorically identified in the contract; and

(4) In the case of a fixed price contract, the contract, shall contain a guaranteed maximum price for completion of a specifically described work program;

(5) In the case of a cost reimbursement contract, the contract shall contain a fixed dollar fee which may not be increased except by a formally executed contract amendment which increases the scope of work.

41.64: Required Provisions-Consulting Engineering Agreements

All contracts between local governmental units and consulting engineers shall contain the following provisions.

(1) The owner and the engineer agree that the following provisions apply to the eligible work to be performed under this agreement and that such provisions supersede any conflicting provisions of this agreement.

(2) The work under this agreement is funded in part by the water pollution abatement fund. Neither the Commonwealth of Massachusetts nor the Department of Environmental Protection or the Water Pollution Abatement Trust is a party to this agreement. This agreement which covers eligible work is subject to regulations contained in 310 CMR 41.00 in effect on the date of execution of this agreement. As used in these clauses, the words "the date of execution of this agreement" means the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.

(3) The owner's rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or this agreement.

41.64: continued

- (4) The engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the engineer under this agreement. The engineer shall without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.
- (5) The engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable Department requirements in effect on the date of execution of this agreement.
- (6) The owner's or Department's approval of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the engineer of responsibility for the technical adequacy of his work. Neither the owner's nor Department's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.
- (7) The engineer shall be and shall remain liable, in accordance with applicable law, for all damages to the owner or Department caused by the engineer's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent solely attributable to the owner, owner-furnished data or any third party not controlled by the engineer. The engineer shall not be responsible for any time delays in the project caused by circumstances beyond the engineer's control. Where innovative processes or techniques are recommended by the engineer and are used, the engineer shall be liable only for gross negligence to the extent of such use.
- (8) The services to be performed by the engineer shall include all services required to complete the scope of work as defined and set out in the engineering services agreement to which these provisions are attached in accordance with applicable regulations.
- (9) The owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the engineer's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. The engineer must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the engineer of the notification of change, unless the owner grants a further period of time before the date of final payment under this agreement.
- (10) No services for which an additional compensation will be charged by the engineer shall be furnished without the written authorization of the owner.
- (11) In the event that there is a modification of Department requirements relating to the services to be performed under this agreement after the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.
- (12) Either party may terminate this agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(13) The owner may terminate this agreement, in whole or in part, in writing, for its convenience, if the termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new phase) and the engineer is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party before termination.

(14) If the owner terminates for default, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the engineer at the time of termination may be adjusted to the extent of any additional costs the owner incurs because of the engineer's default. If the engineer terminates for default or if the owner terminates for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the engineer for services rendered and expenses incurred before the termination, in addition to termination settlement costs the engineer reasonably incurs relating to commitments which had become firm before the termination.

(15) Upon receipt of a termination action under 310 CMR 41.64(13) or (14), the engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the engineer may have accumulated in performing this agreement, whether completed or in process.

(16) Upon termination under 310 CMR 41.64(13) or (14), the owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work the owner takes over for completion will be completed at the owner's risk, and the owner will hold harmless the engineer from all claims and damages arising out of improper use of the engineer's work.

(17) If, after termination for failure of the engineer to fulfill contractual obligations, it is determined that the engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the owner. In such event, adjustment of the price provided for in this agreement shall be made as 310 CMR 41.64(14) of this clause provides.

(18) Except as this agreement otherwise provides, all claims, counter-claims, disputes, and other matters in question between the owner and the engineer arising out of or relating to this agreement or the breach of it will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction pursuant to the laws of Massachusetts.

(19) The Engineer shall maintain books, records, documents, and other evidence directly pertinent to performance on eligible work under this agreement in accordance with generally accepted accounting principles and practices consistently applied. The engineer shall also maintain the financial information and data used by the engineer in the preparation or support of the cost submission and a copy of the cost summary submitted to the owner. The Governor, the Secretary of Administration and Finance, the Department of Municipal Facilities and State Auditor's Office or any of their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying. The engineer will provide proper facilities for such access and inspection.

(20) The engineer agrees to include 310 CMR 41.64(19)-(23) in all his contracts and all subcontracts directly related to project performance that are in excess of \$10,000.

(21) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

41.64: continued

(22) The engineer agrees to the disclosure of all information and reports resulting from access to records under 310 CMR 41.64(19) or (20), to any of the agencies referred to in 310 CMR 41.64(19), provided that the engineer is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the engineer.

(23) The engineer shall maintain and make available records under 310 CMR 41.64(19) and (20) during performance on eligible work under this agreement and until 6 years from the date of final payment for the project. In addition, those records which relate to any "Dispute", appeal under an assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such appeal, litigation, claim, or exception if such date is later than six years from the date of final payment:

(24) (This clause is applicable if the amount of this agreement exceeds \$100,000). If the owner or Department determine that any price, including fee, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any sums because the engineer or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, cost, or fee shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

(25) Any subcontractors and outside associates or consultants required by the engineer in connection with services under this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as the owner specifically authorizes in writing during the performance of this agreement. The owner must give prior approval for any substitutions in or additions to such subcontractors, associates, or consultants.

(26) The engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap status or national origin.

(27) The engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(28) If it is found, after notice and hearing, by the owner that the engineer, or any of the engineer's agents or representatives, offered or gave gratuities (in form of entertainment, gifts, or otherwise), to any official, employee or agent of the owner, or of the state, in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this agreement, the owner may, by written notice to the engineer, terminate the right of the engineer to proceed under this agreement. The owner may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts upon which the owner bases such findings shall be in issue and may be reviewed in proceedings under the remedies clause of this agreement.

(29) In the event this agreement is terminated as provided in 310 CMR 41.64(28), the owner shall be entitled: (1) To pursue the same remedies against the engineer as it could pursue in the event of a breach of the contract by the engineer, and (2) as penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the owner) which shall be not less than 3 nor more than 10 times the costs the engineer incurs in providing any such gratuities to any such officer or employee.

(30) The Department has the right to use, duplicate, and disclose, in whole or in part, in any manner for any purpose whatsoever, any plans, drawings, designs, specifications, computer programs (which are substantially paid for with trust funds), technical reports, operating manuals, and other work submitted with an application or which are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement. The owner and the Department reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The engineer shall include appropriate provisions to achieve the purpose of this condition in all subcontracts expected to produce copyrightable subject data.

(31) All such subject data furnished by the engineer pursuant to this agreement are instruments of his services in respect of the project. It is understood that the engineer does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the owner reuses the subject data without the engineer's specific written verification or adaptation, such reuse will be at the sole risk of the owner, without liability to the engineer. Any such verification or adaptation will entitle the engineer to further compensation at rates agreed upon by the owner and the engineer.

(41.65 through 41.69 Reserved)

41.70: Reserved for Projects for the Implementation of Non-Point Source Control Management Programs and Estuary Conservation and Management Plans

NOTE: Title VI of the Clean Water Act and M.G.L. c. 29C provide for projects for the implementation of non-point source control management programs and estuary conservation and management plans to be eligible for financial assistance. The Department is of the opinion that the nature and type of these projects and issues surrounding these programs such as establishing priorities warrant study and input from the concerned public. Furthermore, projects which are eligible could include stormwater run-off control and new federal regulations are expected in the end of April, 1990. Therefore, the Department has decided to establish a technical advisory committee to assist in developing this section.

In order to avoid losing federal funds the Department must move ahead with promulgating this chapter. However 310 CMR 41.13(1) reserves 5% to FY91 Title VI funds as well as the state matching funds to provide assistance to projects under this section. Therefore, when the advisory committee completes its assignment and this chapter is amended, funds will be available for eligible projects that are ready to proceed.

REGULATORY AUTHORITY

310 CMR 41.00: St. 1989, c. 275, s. 3; M.G.L. c. 21, s. 27A.

APPENDIX B

**AUTHORITY TO FILE APPLICATION
CERTIFYING AUTHORITY TO FILE**

Sample: Resolution Authorizing Officer to File
Application with the Massachusetts
Bureau of Municipal Facilities for
State Financial Assistance for Water
Pollution Abatement Facilities.

AUTHORITY TO FILE APPLICATION

Whereas, _____ after thorough investigation, has
(Applicant)
determined that the work activity consisting of: _____

is both in the public interest and necessary to reduce the danger
of water pollution, and that to undertake this activity, it is
necessary to apply for state assistance; and

Whereas, the Department of Environmental Protection
(the "DEP") and the Massachusetts Water Pollution Abatement Trust
(the "Trust") of the Commonwealth of Massachusetts, pursuant to
Chapter 21 and Chapter 29C of the General Laws of the
Commonwealth ("Chapter 21" and "Chapter 29C") are authorized to
make grants and loans to municipalities for the purpose of
funding preconstruction and construction activities relative to
Water Pollution Abatement Facilities (as defined in Section 1 of
Chapter 29C); and

Whereas, the Applicant has examined the provisions of the
Act, Chapter 21 and Chapter 29C, and believes it to be in the
public interest to file a grant and/or loan application.

NOW, THEREFORE, BE IT RESOLVED by _____
(Governing Body)

as follows:

1. That _____ is hereby authorized on
(Title of Official)
behalf of the Applicant to file applications and execute
agreements for grant and/or loan assistance as well as
furnishing such information, data and documents pertaining
to the applicant for a grant(s) and/or loan(s) as may be
required; and otherwise to act as the authorized
representative of the Applicant in connection with this
application;
2. That the purpose of said grant(s) and/or loans, if awarded,
shall be to fund pre-construction and construction
activities to include the development of facilities plans,
specifications and drawings and related work activities as
determined to be eligible for funding under provision of the
Act, Chapter 21 and Chapter 29C;
3. That if said award is made the Applicant agrees to pay those
costs which constitute the required Applicant's share of the
project cost.

Sample: Certification to the Massachusetts Department of Environmental Protection, Bureau of Municipal Facilities as to Authority to File Applications for State Financial Assistance for the Construction of Water Pollution Abatement Facilities.

CERTIFYING AUTHORIZATION TO FILE

I hereby certify that the _____ of
(Name of Governing Body)

the _____ (hereinafter
(Corporate Name of Local Government Unit)

referred to as the "Applicant"), at a meeting noticed and conducted in accordance with all applicable legal requirements, duly voted to authorize

(Title of Local Government Unit Official)

to act on behalf of the Applicant, as its agent, in filing applications for, executing agreements regarding, and performing any and all other actions necessary to secure for the Applicant such loans and/or grants for the planning, design, and construction of Water Pollution Abatement Facilities as may be made available to the Applicant pursuant to the provisions of the Massachusetts Clean Waters Act (M.G.L. c.21, section 27-33E, inclusive, as amended) and the Water Pollution Abatement Revolving Loan Program (M.G.L. c.29C) for the following project:

(describe project)

I hereby certify that _____ is the
(Name of Person)

present incumbent of the position referenced above, and do hereby
certify:

1. That the attached resolution is a true and correct copy
of the resolution as finally adopted at a meeting of the
governing body held on the _____ day of _____,
19____, and duly recorded in my office:

2. That said meeting was duly convened and held in all
respects in accordance with law and to the extent required by
law, due and proper notice of such meeting was given; and a legal
quorum was present throughout the meeting, and a legally
sufficient number of members of the governing body voted in the
proper manner and for the adoption of said resolution; that all
other requirements and proceedings under the law incident to the
proper adoption or passage of said resolution, including
publication, if required, have been duly fulfilled, carried out,
and otherwise observed; and that I am authorized to execute this
certificate:

3. That if an impression of a seal has been affixed below,
it constitutes the official seal of the Applicant and this
certificate is hereby executed under such official seal; but if
no seal has been affixed, the Applicant does not have an official
seal:

IN WITNESS WHEREOF, I have hereunto set my hand this

_____ day of _____, 19____.

APPENDIX C
APPROPRIATION ARTICLES

MASSACHUSETTS WATER POLLUTION
ABATEMENT TRUST

NOTE: The following are suggested forms of a town meeting article and vote and city council loan order. These forms are provided as guidance only. Bond counsel to the municipality should be consulted to determine the exact form of authorization required and to determine which local body or official must approve the terms of the borrowing and the forms of documentation. Note also that districts and regional local governmental units may have substantially different authorization requirements from those indicated below for towns and cities.

SUGGESTED FORM OF TOWN MEETING ARTICLE AND VOTE

Article

To see if the Town will vote to appropriate a sum of money for the construction of (insert description of water pollution abatement facilities); to determine whether this appropriation shall be raised by borrowing from the Massachusetts Water Pollution Abatement Trust or otherwise; and to take any other action relative thereto.

Vote

Voted: that \$_____ is appropriated for the purpose of financing the construction of (insert description of water pollution abatement facilities) including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws; that to meet this appropriation the Treasurer with the approval of the Selectmen is authorized to borrow \$_____ and issue bonds or notes therefor under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws; that such bonds or notes shall be general obligations of the Town unless the Treasurer with the approval of the Selectmen determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C; that the Treasurer with the approval of the Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C and in connection therewith to enter into a loan agreement

and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the (Board of Selectmen, Board of Public Works or other appropriate local body or official) is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary to carry out the project.

SUGGESTED FORM OF CITY COUNCIL LOAN ORDER

Ordered: that \$_____ is appropriated for the purpose of financing the construction of (insert description of water pollution abatement facilities) including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws; that to meet this appropriation the Treasurer with the approval of the (Mayor or Manager) [and the (Auditor, Finance Committee or other appropriate local body or official)] is authorized to borrow \$_____ and issue bonds or notes therefor under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws; that such bonds or notes shall be general obligations of the City unless the Treasurer with the approval of the (Mayor or Manager) [and the (Auditor, Finance Committee or other appropriate local body or official)] determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C; that the Treasurer with the approval of the (Mayor or Manager) [and the (Auditor, Finance Committee or other appropriate local body or official)] is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C and in connection therewith to enter into a loan agreement and/or a security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the (Mayor or Manager) is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary to carry out the project.

APPENDIX D
CERTIFICATE OF TITLE

CERTIFICATE AS TO TITLE TO PROJECT SITE

I, _____, Attorney At Law, representing
the (City/Town) of _____, Massachusetts,
herein called the Applicant, as title counsel, do hereby certify:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the site or sites being provided by the Applicant for all elements (treatment plant, interceptors, outfalls, pumping stations, force mains and appurtenances) of the sewage treatment works project for which State Financial Assistance has been offered, identified as BMF- _____.
2. That I have examined the deed records of the county or counties in which this project is to be located and, in my opinion, the Applicant has a legal and valid fee simple title or other estate or interest in the site of the project, including the necessary easements and rights-of-way as are necessary to undisturbed use and possession for the purposes of construction and operation for the estimated life of the project.
3. That any deeds or documents required to be recorded, in order to protect the title of the owner and the interest of the Applicant, have been duly recorded or filed for record wherever necessary with reference to Contracts _____ through _____, inclusive.

Dated this _____ day of _____, 19____.

APPENDIX E

SEWER LINE/WATER SUPPLY PROTECTION POLICY

DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING
POLICY FOR REVIEW OF SEWER LINE/WATER SUPPLY PROTECTION

The Department of Environmental Quality Engineering seeks to protect existing and potential water supplies from the potentially negative effects of leaking sewer lines through the adoption of a Department policy on this subject.

The following restrictions will apply to new sewer construction statewide:

Gravel Packed Wells

- Within the 400 foot radius protective distance around gravel packed wells, all sewer lines and appurtenances are prohibited, unless they are necessary to eliminate existing and/or potential sources of pollution to the well.

Tubular Wells

- Within the 250 foot radius protective distance around tubular wells, all sewer lines and appurtenances are prohibited, unless they are necessary to eliminate existing and/or potential sources of pollution to the well.

Gravel Packed and Tubular Wells

- Within a minimum radius of 2,640 feet or unless otherwise documented by an appropriate study specifically defining the area of influence and approved by the Division of Water Supply, all sewer lines and appurtenances will be designed and constructed for maximum watertightness.

° Force Mains or Pressure Sewers: shall be tested at 150% above maximum operating pressure or 150 p.s.i. whichever is greater. Testing shall conform to the requirements of the American Water Works Association (AWWA) standard C 600.

° Gravity Sewers: shall be tested by approved methods which will achieve test results for infiltration or exfiltration of less than 100 gallons/inch diameter/mile/24 hours.

° Manholes: shall be installed with watertight covers with locking or bolted and gasketed assemblies. Testing for infiltration/exfiltration shall conform to the same standard as the maximum allowed for pipes in the manhole as required for gravity sewers, indicated above.

- Satisfactory test results for Force Mains, Manholes and Gravity Sewers shall be performed prior to the expiration of the contractor's one year guarantee period.

- All pumping stations within this zone shall have standby power high water alarms telemetered to an appropriate location that is manned at all times. An emergency contingency plan must be developed by the owner and approved by the DWPC.

- A minimum of Class B bedding as defined by WPCF-MOP9 must be used for all piping.

- Service connections (laterals and house connections) shall be rigidly inspected by the appropriate municipal official. Certified inspection reports shall be submitted to the DWPC.

Bedrock Wells

The above requirements are the same for bedrock wells, with the Department reserving the right to require more stringent controls on a case-by-case basis.

Surface Water Supplies

- Within 100 feet of all surface water supplies and tributaries all sewer lines and appurtenances are prohibited except as required to cross tributaries or to eliminate existing or potential pollution to the water supply. In the latter case watertight construction methods shall be used.
- Tributary stream crossings shall employ watertight construction methods of sewer lines and manholes. Watertight construction must extend 100 feet to either side of the stream.
- Within 1,000 feet of surface water supplies and tributaries, all pumping stations shall have standby power and high water alarms telemetered to an appropriate location that is manned at all times. An emergency contingency plan must be developed by the owner of the wastewater treatment facility and submitted to the DWPC for approval.
- Beyond 1,000 feet and within the watershed of surface water supplies the Department may in specific circumstances after review, require additional controls.

Potential Public Water Supplies

The above requirements also apply to potential public water supplies.

Baseline Data Requirements

Two (2) copies of an appropriately scaled map(s) shall be submitted to the Department which details the proposed sewers and/or appurtenances and also includes the following:

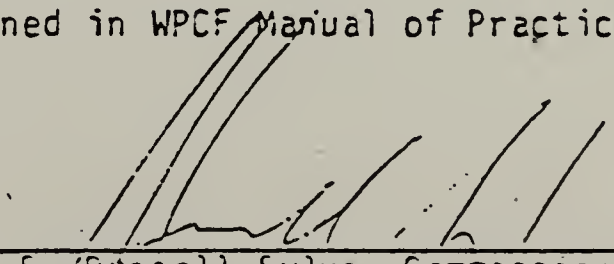
- 1) the location of all nearby existing or potential surface water supplies, tributaries thereto, and watershed boundaries;
- 2) the location of existing and potential public and municipal potable groundwater supply wells.

The Department reserves the right to impose more restrictive measures than those contained in this policy as deemed appropriate.

Definitions

- ° Appurtenances - all attachments to sewer lines necessary for the transport and operation and maintenance of sewer lines, including manholes, pumping station, siphons, etc.
- ° Area of influence - that area of an aquifer which contributes water to a well under the most severe recharge and pumping condition that can be realistically anticipated (i.e. pumping at the safe yield of the well for 180 days without any natural recharge occurring). It is bounded by the groundwater divides which result from pumping the well and by the contact of the edge of the aquifer with less permeable materials such as till and bedrock. At some locations, streams and lakes may form recharge boundaries.
- ° Potential public water supply - areas designated by communities for water supply purposes where land has been set aside and Department approved pump tests conducted and surface water supplies as defined below.
- ° Surface Water Supply - Waters classified as Class A by the DWPC.
- ° Public Water Supply Systems - as defined in 310 CMR 22.02 (DEQ Drinking Water Regulations).
- ° Class B Bedding - as defined in WPCF Manual of Practice No. 9.

APPROVED:


S. Russell Sylva, Commissioner

May 19, 1986

Date (original approval)

February 2, 1988

Amended

Date

APPENDIX F
TAX COMPLIANCE

STATEMENT OF TAX COMPLIANCE

I, _____, as _____ of
_____, whose principal place of
business is located at _____, do hereby
certify that the above-named _____ has
complied with all laws of the Commonwealth relating to taxes.

Signed under the penalties of perjury this _____ day of
_____, 19____.

DATED: _____ (Authorized Signature)

APPENDIX G

**WATER RESOURCE CERTIFICATION
LAND USE CERTIFICATION**

Water Resources and Wastewater Planning Certification

I, the undersigned being duly authorized to act on behalf of the Applicant certify that to the best of my knowledge this project is consistent with current existing state, regional and local water resource and wastewater planning requirements including but not limited to:

1. river basin water quality management plans pursuant to section 303(e) of the Federal Clean Water Act;
2. nonpoint source management plans pursuant to section 319 of the Federal Clean Water Act;
3. estuaries management plans pursuant to section 320 of the Federal Clean Water Act;
4. local water resource management plans pursuant to regulations on the Water Resources Commission;
5. water emergency planning pursuant to c.21G of the Massachusetts General Laws.

Applicant

Type Name

Title

Signature

Date

LAND USE-CERTIFICATION

I, the undersigned, being duly authorized to act on behalf of the applicant certify that the land use regulations, zoning and other controls identified below are consistent with the wastewater system service populations as projected in the applicant's facilities plan:

Applicant

Type Name

Title

Signature

Date

APPENDIX H
COST AND PRICE SUMMARY

COST OR PRICE SUMMARY FORMAT FOR SUBAGREEMENTS UNDER BUREAU OF MUNICIPAL FACILITIES FINANCIAL ASSISTANCE				BMF-90-1	
PART I - GENERAL					
1. APPLICANT				2. PROJECT	
3. NAME OF CONTRACTOR OR SUBCONTRACTOR				4. DATE OF PROPOSAL	
5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (include zip code)			6. TYPE OF SERVICE TO BE FURNISHED		
PART II - COST SUMMARY					
7. DIRECT LABOR (specify labor categories)		ESTI- MATED Hours	HOURLY RATE	ESTIMATED COST	TOTAL
DIRECT LABOR TOTAL:					\$
8. INDIRECT COSTS (Specify indirect cost pools)		RATE	x BASE =	ESTIMATED COST	
			\$	\$	
INDIRECT COSTS TOTAL:					\$
9. OTHER DIRECT COSTS					
a. TRAVEL				Estimated Cost	
(1) TRANSPORTATION				\$	
(2) PER DIEM				\$	
TRAVEL SUBTOTAL:				\$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify Categories)		QTY	COST	ESTIMATED COST	
			\$	\$	
EQUIPMENT SUBTOTAL:				\$	

c. SUBCONTRACTS

ESTIMATED
COST

TOTALS

\$

SUBCONTRACTS SUBTOTAL:

\$

d. OTHER (Specify categories)

ESTIMATED
COST

\$

OTHER TOTAL:

\$

OTHER DIRECT COSTS TOTAL:

\$

TOTAL ESTIMATED COST

\$

PROFIT

\$

TOTAL PRICE

\$

PART III - CERTIFICATIONS

CONTRACTOR

1. HAS A FEDERAL AGENCY OR A FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL GRANT OR CONTRACT WITHIN THE PAST TWELVE MONTHS?

☐

YES

☐

NO (If "YES" give name address and telephone number of reviewing office)

2. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES

3. This proposal is submitted for use in connection with and in response to (1) _____

_____. This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current, and accurate as of (2) _____

_____ and that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that I understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above costs and pricing data have been determined, as a result of audit, not to have been complete, current and accurate as of the date above.

(3) _____
DATE OF EXECUTION

SIGNATURE OF PROPOSER

TITLE OR PROPOSER

APPLICANT

I certify that I have reviewed the cost/price summary set forth herein and the proposed costs/price appear acceptable for subagreement award.

DATE OF EXECUTION

SIGNATURE OR REVIEWER

TITLE OF REVIEWER

BMF REVIEWER (If applicable)

DATE OF EXECUTION

SIGNATURE OF REVIEWER

TITLE OF REVIEWER

APPENDIX I
MBE/WBE FORMS

STATE FINANCIAL ASSISTANCE APPLICATION
NOTIFICATION OF MBE/WBE PARTICIPATION

TO: Massachusetts Bureau of Municipal Facilities

FROM:

SUBJECT: MBE/WBE Participation

AUTHORIZED REPRESENTATIVE
ADDRESS

TELEPHONE

CONSULTING ENGINEER
ADDRESS

TELEPHONE
PROGRAM MANAGER

PROJECT NO.

PROJECT DESCRIPTION

TOTAL PROJECT COST:

TOTAL ELIGIBLE COST:

TOTAL ENGINEERING COST:

TOTAL MBE PARTICIPATION: \$ _____ % MBE PARTICIPATION _____

TOTAL WBE PARTICIPATION: \$ _____ % WBE PARTICIPATION _____

SIGNATURE _____ DATE _____

Authorized Representative

I have reviewed the documentation submitted by the Applicant demonstrating his positive efforts in response to State Regulation 310 CMR 41.00 Financial Assistance for Water Pollution Abatement Facilities and have determined that the Consulting Engineer is in compliance _____

non-compliance _____

compliance waived _____

with goals for MBE/WBE participation.

PROGRAM MANAGER
BUREAU OF MUNICIPAL FACILITIES

DATE

ATTACHMENT A

MBE/WBE PERCENTAGE PARTICIPATION HAVING BEEN MET, the following information must be submitted with the application for financial assistance.

1. Total dollar amount of the engineering contract: _____
2. Total dollar amount of MBE/WBE participation: _____
3. Percentage of MBE/WBE participation: _____
4. List of MBE/WBE Subcontractors and type of work to be performed:

This Attachment must be signed by an authorized representative of the consulting firm.

FIRM: _____

By: _____

(Signature)

Name:

Title:

Address:

Telephone:

SCHEDULE A
ESTIMATED SCHEDULE FOR PARTICIPATION BY MBES AND WBES

Project No. _____

Location _____

Name of Prime Consultant

TYPE OF WORK CONTRACT TASKS OR PARTS THEREOF TO BE PERFORMED		PROJECTED DATE OF WORK	AGREED PRICE
NAME OF MBE	ADDRESS		
1.	_____		
2.	_____		
3.	_____		
4.	_____		
5.	_____		
NAME OF WBE			
1.	_____		
2.	_____		
3.	_____		
4.	_____		
5.	_____		

PLEASE ATTACH COPY OF SOMBA CERTIFICATION

ATTACHMENT B

THE MBE/WBE GOALS NOT HAVING BEEN MET, the following information must be submitted the application for financial assistance.

PUBLIC ENTITY: _____ MUNICIPAL
ASS'T PROGRAM _____

BMF PROJECT NO. _____ CONTRACT NO. _____

1. Total dollar amount of the contract \$ _____

2. Total dollar amount of MBE participation \$ _____

3. Percentage of MBE participation: % _____

4. Total dollar amount of WBE participation \$ _____

5. Percentage of WBE participation \$ _____

6. List of MBE/WBE Subcontractors:

a. Use attached Schedule A for participation.

b. Use attached Schedule B

List each minority and women-owned firm to which a letter of solicitation was sent. It is suggested that correspondence be sent by certified or registered mail since the burden of proof to attain the MBE/WBE goals rests with the consultant.

This attachment must be completed and signed by the consultant and approved by the compliance manager of the Public Entity.

PUBLIC ENTITY: _____ CONSULTANT: _____

BY: _____
(Signature Compliance Manager)

BY: _____
(Signature)

Name:

Name:

Title:

Title:

Address:

Address:

Telephone

Telephone:

SCHEDULE B

1. List all MBE/WBE assistance organizations and contractors contacted.

NOTE: A copy of each solicitation letter must be attached.

- a. Name of Association/Contractor:

Address:

Phone:

Contact Person:

Specific Subcontract
Solicited:

Estimated Value of
Subcontract Announced:

Date of Solicitation Letter:
- b. Was a follow-up call made?

Why Not?

Date of Call:

Name of Caller:

Name of Association/Contractor
Representative Spoken to:
- c. Reason not chosen

